National Energy Board | Office national de l'énergie

Reasons for Decision

Emera Brunswick Pipeline Company Ltd.

MH-3-2007

May 2008

Detailed Route Hearing

Canada

National Energy Board

Reasons for Decision

In the Matter of

Emera Brunswick Pipeline Company Ltd.

Application by Emera Brunswick Pipeline Company Ltd., dated 12 July 2007 and 7 August 2007 for approval of the Plans, Profiles, and Book of Reference which detail the proposed route of the Brunswick Pipeline – Certificate GC-110 – Detailed Route Hearing

MH-3-2007

May 2008

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Abbreviations

Act or NEB Act	National Energy Board Act
Board or NEB	National Energy Board
Brunswick Pipeline	Emera Brunswick Pipeline Company Ltd.
CEAA	Canadian Environmental Assessment Act
certificate	certificate of public convenience and necessity
corridor	approved general corridor
Debly	Estate of A.J. Debly
Galbraith or Galbraith Construction	Galbraith Construction Ltd. and/or Galbraith Equipment Co. Ltd.
IPL	international power line
KP	kilometre post
kPa	kiloPascals
LNG	liquefied natural gas
Latour	Melvin Hannan, Beatrice Latour, and Marc Latour
Maritimes and Northeast Pipeline	Maritimes and Northeast Pipeline Management Ltd.
NB Power	New Brunswick Power Transmission Corporation
NB Southern	New Brunswick Southern Railway Company Limited
PID	Parcel Identifier, for parcels of land in New Brunswick
PPBoR	plans, profiles, and book of reference
RoW	right of way
Saint John & Maine	Saint John and Maine Railway Co.
Saint John Lateral Pipeline	Maritimes and Northeast Pipeline Management Ltd. Saint John Lateral Pipeline
Sierra	Sierra Supplies Ltd.
US	United States of America

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder;

IN THE MATTER OF applications dated 12 July 2007 and 7 August 2007 by Emera Brunswick Pipeline Company Ltd., pursuant to section 33 of the Act, for approval of the Plans, Profiles, and Book of Reference respecting the detailed route for the Brunswick Pipeline Certificate GC-110 from the Canaport[TM] Liquefied Natural Gas (LNG) Terminal at Mispec Point, New Brunswick to a point on the US border near St. Stephen, New Brunswick;

IN THE MATTER OF written statements of opposition concerning portions of the proposed detailed route of the Brunswick Pipeline Project;

AND IN THE MATTER OF National Energy Board Hearing Order MH-3-2007.

HEARD in Saint John, New Brunswick on 28, 29, 30, and 31 January 2008;

BEFORE:

Mr. K.M. Bateman	Presiding Member
Mr. S. Crowfoot	Member
Mr. D. Hamilton	Member

Appearance	On behalf of	Witness
Company		
Mr. N. Gretener Mr. P. Zed, Q.C	Emera Brunswick Pipeline Company Ltd.	Mr. C. Blair Mr. R. Mayer Mr. R. MacDonald Mr. P. Seheult
Landowner		
Mr. S. Horgan	Galbraith Construction Ltd. & Galbraith Equipment Co. Ltd	Mr. D. Galbraith Mr. R. Ridgway Mr. S.A. Ramsay
Mr. Frederick P. Tuddenham	on his own behalf	
Mr. J. Gillis	Sierra Supplies Ltd.	Mr. W. Debly
Ms. T. Debly	The Estate of A.J. Debly	

Intervenors

Mr. W. Nason	on behalf of Mr. Wallace Nason and Ms. Heather Richard	
Mr. D. Farrar, Q.C. Ms. L. Gallivan	New Brunswick Southern Railway Company Limited	Mr. J. Murphy
Mr. D. Farrar, Q.C. Ms. L. Gallivan	Saint John and Maine Railway Co.	Mr. J. Murphy
Mr. C. Poley	on behalf of Mr. Clayton Edward Poley and Ms. Deborah Marie Poley	
Mr. W. Thompson	on his own behalf	
Mr. S. Wilkes Ms. V. Wilkes	on their own behalf	

National Energy Board

Ms. M.A. Fowke Ms. J. Saunders	National Energy Board	

Chapter 1

Background

1.1 Regulatory Process for the Brunswick Pipeline Project

On 23 May 2006, Emera Brunswick Pipeline Company Ltd. (Brunswick Pipeline) applied to the National Energy Board (NEB or Board) for a certificate of public convenience and necessity (certificate) under section 52 of the *National Energy Board Act* (Act or NEB Act) authorizing Brunswick Pipeline to construct and operate the Brunswick Pipeline Project.

The Brunswick Pipeline Project was referred to a review panel pursuant to section 25 of the *Canadian Environmental Assessment Act* (CEAA). The NEB hearing process was used as a substitute for an environmental assessment by a review panel as provided for under section 43 of the CEAA. The substitution was approved by the Federal Minister of the Environment and Minister Responsible for the Canadian Environmental Assessment Agency. In November and December 2006, the Board held a public hearing to review the certificate application. The panel released its report on 11 April 2007, concluding that the Brunswick Pipeline Project is not likely to result in significant adverse environmental effects provided the panel's recommendations are implemented and appropriate mitigation measures identified during the course of the review are applied. The panel recommended that the project be allowed to proceed to regulatory and departmental decision making as long as the recommendations in its report are made part of the requirements of any approval by the NEB. The response of the Government of Canada to the panel report was approved by the Governor in Council pursuant to subsection 37(1.1) of the CEAA on 17 May 2007.

In May 2007, the Board released the GH-1-2006 Reasons for Decision, approving the Brunswick Pipeline Project on the grounds that the pipeline is necessary to meet the future energy needs of Canadians. On 7 June 2007, Governor in Council approved GC-110, a certificate of public convenience and necessity for the construction and operation of the pipeline.

1.2 Description of the Brunswick Pipeline Project

The proposed facilities would consist of approximately 145 kilometres of 762 mm (30-inch) outside diameter pipeline extending from the Canaport™ Liquefied Natural Gas (LNG) Terminal at Mispec Point, New Brunswick to a point on the US border near St. Stephen, New Brunswick where it would interconnect with the Maritimes and Northeast Pipeline system. Brunswick Pipeline proposes to have pipeline construction completed to meet a target in-service date of 1 November 2008.

The approved Brunswick Pipeline Project includes a general route corridor varying in width from 100 to 500 metres within which the pipeline could be located (see Figure 1-1). This approved general corridor heads northward from Mispec Point and then turns generally westward through the City of Saint John, following an existing power line through Rockwood Park and then crossing the Saint John River at Pleasant Point. West of Saint John, the approved general corridor initially parallels the existing Maritimes and Northeast Pipeline Management Ltd. (Maritimes and Northeast Pipeline) Saint John Lateral Pipeline and then generally follows the existing New Brunswick Power Transmission Corporation (NB Power) international power line (IPL) to the US border. The width of the portion of the approved general corridor from Mispec Point through the City of Saint John is generally 100 meters. The corridor segment following the Saint John Lateral Pipeline is typically 200 metres wide, and this increases to generally 500 metres for the portion following the NB Power IPL.

1.3 Determination of the Detailed Route

Certificate GC-110 granted Brunswick Pipeline the approval to construct and operate a pipeline within the specified general route corridor. Once a general route is approved, the Act provides for a process to determine the detailed location of the pipeline right of way (RoW) within the approved general corridor (corridor).

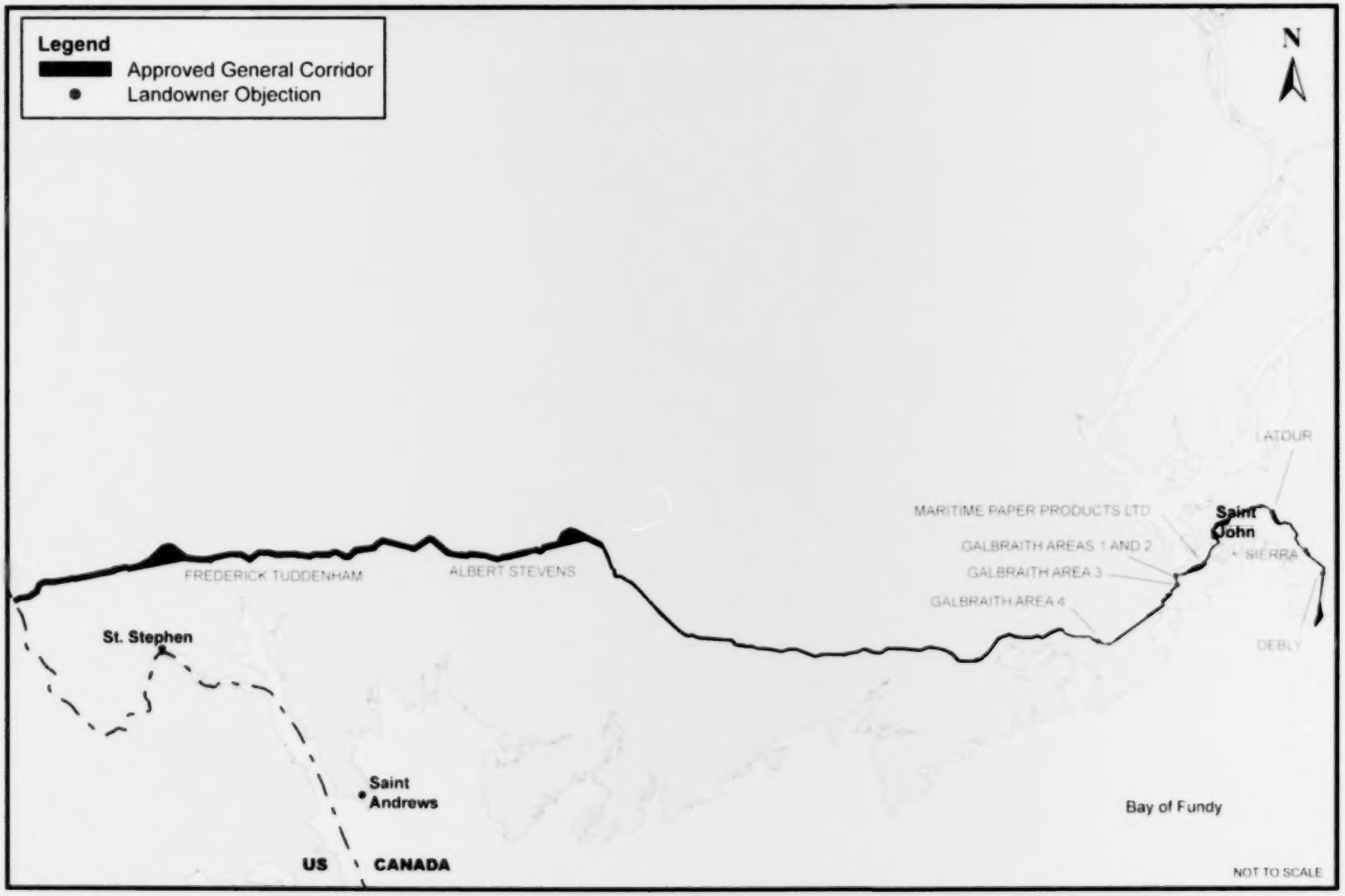
The approval process prescribed by the Act for considering the detailed route is designed to involve all affected landowners as well as persons that may be adversely affected[1] by the proposed route. This process begins when the company files its plans, profiles, and book of reference (PPBoR) detailing the precise location of the proposed pipeline route including the lands to be crossed, the types and amounts of land rights required, and the affected landowners and tenants.

Once the PPBoR has been filed, paragraph 34(1)(a) of the Act requires the company to serve a notice on all landowners from whom land or land rights are proposed to be acquired. Pursuant to paragraph 34(1)(b) of the Act, the company must also arrange to publish a notice in at least one issue of a local newspaper. These notices describe the proposed detailed route of the pipeline and the procedure to be followed in making objections to the Board. If they have objections, landowners have 30 days after receiving the notice to file a written statement of opposition with the Secretary of the Board and the company explaining their interest in the detailed route and their reasons for opposing it. Persons that may be adversely affected by the proposed route have 30 days after the last publication of the notice to file a written statement of opposition with the Board and the company setting out the nature of their interest in the affected lands and their grounds for opposing the proposed detailed route.

---

1 34(4) A person who anticipates that his [or her] lands may be adversely affected by the proposed detailed route of a pipeline, other than an owner of lands [whose lands are crossed by the proposed detailed route].

Figure 1-1
Brunswick Pipeline Project – Approved General Corridor and Location of Landowner Objections



If no written statements of opposition to the detailed route are received within the 30-day periods, the Board may approve the PPBoR without a public hearing. However, if written statements of opposition are received within the 30-day periods, the Board must hold a public hearing in the area where the relevant lands are located, unless the opposition is withdrawn or the statement is deemed frivolous or vexatious. After reviewing all of the evidence, the Board determines whether the proposed route is the best possible route. A copy of the Board's decision is required to be sent to the Federal Minister of Natural Resources and to each person who made representations at the hearing.

On 12 July and 7 August 2007, Brunswick Pipeline applied to the Board for approval of the PPBoR for the proposed detailed route of the pipeline, including three areas of the route that would extend slightly outside of its corridor for the Brunswick Pipeline Project. These three areas were subject to a variance assessment pursuant to section 21 of the Act and an environmental assessment pursuant to the CEAA. All parties to the certificate proceeding, as well as landowners being served with section 34 notices in the area of the variances, were served with a notice regarding these variances. Notices describing the variances were also published in newspapers in the area, and an opportunity for comment was provided. On 20 December 2007, the Board determined that, taking into account the implementation of Brunswick Pipeline's environmental protection procedures and mitigation measures, and the Board's recommendations imposed as conditions to Certificate GC-110, the proposed routing variances are not likely to cause significant adverse environmental effects. On 21 December 2007, the Board determined that it would be in the public interest to vary Certificate GC-110 pursuant to subsection 21(2) of the Act. Governor in Council approved the issuance of Amending Order AO-1-GC-110 on 14 February 2008, authorizing Brunswick Pipeline to implement the three proposed route variations that fall outside of the corridor.

Pursuant to the Act, Brunswick Pipeline made copies of its PPBoR available for public viewing, served notices on owners of lands proposed to be acquired for the proposed route, and published notices in newspapers in the vicinity of the proposed route. Brunswick Pipeline also undertook several substituted service notices for those lands in which heirs to an estate have not been located or the landowners reside outside the country.

The Board received 18 letters of opposition to the proposed Brunswick Pipeline detailed route, dated between 18 September and 4 October 2007. Of these, the Board found that 11 could be considered statements of opposition to the proposed detailed route of the pipeline within the requirements of subsections 34(3) and (4) of the Act. On 26 November 2007, the Board issued Hearing Order MH-3-2007, setting down these 11 statements of opposition, and the specific lands associated with these oppositions, for a public hearing as follows:

- Sierra Supplies Ltd. (Sierra), PID 55172050;
- five separate statements of opposition from Galbraith Construction Ltd. and Galbraith Equipment Co. Ltd. (Galbraith or Galbraith Construction) in relation to PIDs 00409011, 00408294, 00403709, 00403618, and 00274357;
- Frederick Tuddenham, PID 01266196;
- Maritime Paper Products Ltd., PID 00405589;

- Melvin Hannan and Beatrice Latour[2] (Latour), PIDs 00414201, 00319053, 00319079, and 00413856;
- Estate of A.J. Debly (Debly), PID 00417097; and
- Albert Stevens, PID 01340983.

East Point Inc. applied for and was granted intervenor status in the detailed route hearing as it pertained to the Latour statement of opposition. Furthermore, the following persons applied for and were granted intervenor status in the detailed route hearing as it pertained to the Galbraith statements of opposition:

- Mr. Clayton Edward Poley and Ms. Deborah Marie Poley;
- Mr. Samuel Wilkes and Ms. Vicki Wilkes;
- Mr. William Thompson;
- Mr. Wallace Nason and Ms. Heather Richard;
- Mr. Paul E. Watson and Ms. Violet E. Watson;
- Mr. Laurie Garfield and Ms. Annette Garfield;
- Ms. Anna M. O'Hara;
- Mr. Kamal Mydean;
- New Brunswick Southern Railway Company Limited; and
- Saint John and Maine Railway Co.

Subsequently, Maritime Paper Products Ltd. and Albert Stevens withdrew their statements of opposition, and the remainder proceeded to the hearing stage. Prior to its concerns being heard, East Point Inc. withdrew its intervention regarding the Latour statement of opposition.

For the purposes of the hearing and the resulting decisions rendered by the Board, the five letters of opposition filed by Galbraith were grouped into three distinct detailed route objections as follows:

- Galbraith Area 1 (PID 00409011) and Area 2 (PID 00408294);
- Galbraith Area 3 (PID 00403079 and PID 00403618); and
- Galbraith Area 4 (PID 00274357).

1.4 Detailed Route Hearing Issues

Pursuant to subsection 36(1) of the Act, the Board shall not approve the PPBoR unless it has taken into account all written statements of opposition filed with it pursuant to subsection 34(3) or (4) of the Act and all representations made to it at a public hearing in order to determine:

---

2 The PPBoR indicate that the properties are owned by Beatrice Latour and Marc Latour. The written statement of opposition was filed by Melvin Hannan and Beatrice Latour.

- the best possible detailed route of the pipeline; and
- the most appropriate methods and timing of constructing the pipeline.

Issues already addressed in the context of the certificate hearing, such as the need for the pipeline, are not reconsidered during the course of the detailed route hearing. Further, it is not within the Board's authority to consider matters of compensation or to participate in the negotiation or arbitration processes available through the Federal Minister of Natural Resources.

1.5 Detailed Route Hearing Decisions

On 3 March 2008, the Board issued a Letter Decision, with Reasons to follow, for Galbraith Area 1 and Area 2. The Reasons for this Decision were issued by the Board under separate letter on 11 April 2008.

On 13 March 2008, the Board issued Letter Decisions, with Reasons, for:

- Frederick Tuddenham;
- Latour;
- Sierra; and
- Debly.

On 1 April 2008, the Board issued Letter Decisions, with Reasons, for:

- Galbraith Area 3; and
- Galbraith Area 4.

The Board rejected all of Brunswick Pipeline's proposed detailed route segments that were the subject of the Galbraith objections and approved the applied-for route segments in all of the other cases noted above.

On 11 April 2008, the Board also released its views on its jurisdiction to consider a route outside of the corridor. The Board's consideration of this matter can be found in chapter 3.

All of the decisions with respect to the landowner objections are compiled in this document in chapter 4.

Chapter 2

The Application: Detailed Route

2.1 General Corridor Selection

Brunswick Pipeline submitted that the corridor selection process for the certificate hearing relied upon comprehensive constraint mapping to identify alternative corridors and to assist in selecting a preferred general corridor. The general corridor selection process consisted of the following steps:

1. identification of the project study area – the initial study area was determined and corridor alternatives identified, by the required origin and terminal points of the pipeline and by key constraints, such as engineering and environmental constraints, mapped at a scale of 1:200,000;

2. selection of the preliminary preferred corridor – the corridor alternatives were evaluated and the preliminary preferred corridor was selected based on a more detailed review of the environmental and engineering characteristics of the preliminary corridor alternatives mapped at a scale of 1:50,000, analysis of available information, field investigations, and regulatory and stakeholder consultation; and

3. selection of the preferred general corridor – based on the evaluation of additional corridor routing alternatives to, and modifications of, the preliminary preferred corridor, identified from public and stakeholder consultation, and supplementary field investigations.

Brunswick Pipeline noted that a multi-disciplined project team, assisted by various consultants, was initially assembled to evaluate general corridor alternatives and select a preferred corridor for the Brunswick Pipeline Project. Collective experiences of the team included: recent knowledge of NEB-regulated corridor selection processes, including the processes applied in relation to the Maritimes and Northeast Pipeline Mainline and the Saint John Lateral Pipelines; environmental permitting; RoW land acquisition; and extensive east coast urban, rural, and offshore pipeline construction experience.

Several alternatives were evaluated to connect the Canaport™ LNG Terminal at Mispec Point with the Maritimes and Northeast Pipeline interconnection at the US border near St. Stephen, New Brunswick. In general, the corridor alternatives identified for evaluation avoided known concentrations of environmental constraints and followed existing RoWs wherever feasible. The preferred corridor was selected on the basis of:

- safety;
- constructability;
- minimizing project cost;

- impacts to project schedule; and
- environmental constraints and minimizing disturbance through the use of existing corridors where feasible.

The corridor evaluation and selection approach was divided into urban and rural components. Five main alternatives, including two marine crossing routes of Saint John Harbour and three onshore routes through the City of Saint John, were considered for the urban component of the corridor. Variations to the three main onshore urban alternatives were also identified and considered in response to stakeholder consultation feedback and in an attempt to avoid built-up areas and to allow for crossing the Saint John River without undue difficulty. Three main rural alternatives were assessed.

The corridor selection process involved the project team balancing all of the criteria in evaluating and comparing the corridor alternatives. The preferred urban corridor was selected largely because of its constructability and shorter length compared to the alternatives. The preferred rural corridor was chosen largely due to its shorter length, smaller area required for new RoW, better constructability, and lower potential to interact with environmental constraints. According to Brunswick Pipeline, feedback provided by landowners and other stakeholders led to several refinements to its preliminary preferred corridor prior to filing its certificate application with the Board. Subsequent to its application, Brunswick Pipeline proposed three further corridor modifications involving site-specific corridor widening to provide more detailed routing options to address specific issues identified by potentially affected landowners.[3]

Brunswick Pipeline noted that the width of the urban portion of its preferred general corridor is generally 100 metres, which increases to 200 metres west of Saint John and then to 500 metres or more for its westernmost 60 kilometres. The narrower urban corridor was designed to allow for adjusting the final location of the pipeline RoW while minimizing the impact on local surroundings. Certain segments of the urban corridor are wider than 100 metres where Brunswick Pipeline considered it necessary to have more detailed routing options.

Brunswick Pipeline submitted that a 30 metre wide easement would typically be obtained for the proposed pipeline RoW. Delineation of this RoW within the preferred general corridor would be completed following Board approval of the Brunswick Pipeline Project, if granted, and would be based on further site-specific constraint mapping, field investigations, and information received from the public, landowners, other interested parties, and government agencies.

In its May 2007 GH-1-2006 Reasons for Decision approving the Brunswick Pipeline Project, the Board expressed its view that the preferred general corridor selected by Brunswick Pipeline and the requirement for a 30 metre wide pipeline RoW were appropriate.[4]

---

3 Brunswick Pipeline made these refinements to its preferred corridor prior to the certificate hearing but subsequent to its initial application. These refinements are not the same as the three variances applied for after issuance of Certificate GC-110 as discussed in section 1.3 of these Reasons.

4 GH-1-2006, Emera Brunswick Pipeline Company Ltd., Facilities and Tolls and Tariffs, May 2007, pp. 69 and 72.

2.2 Detailed Route Selection Criteria

Working within the corridor, Brunswick Pipeline defined a RoW, constituting the actual area where the pipeline would be constructed, using a structured system of guiding principles representing the accepted decision-making process in the industry.

The primary principle used by Brunswick Pipeline to determine the alignment of the pipeline RoW, or detailed route, within the corridor was minimizing overall length of the pipeline. This principle is based on the premise that reducing pipeline length reduces the total area disturbed, the overall potential for environmental impact, the construction costs, and the impacts generally on properties affected by the pipeline RoW. Brunswick Pipeline also submitted that minimizing construction costs is in the public interest given the direct impact of such costs on tolls.

The following four secondary principles were used by Brunswick Pipeline in the selection of its detailed route:

1. adhere to guidelines associated with the three classes of constraints (see Table 2-1), as these areas are of environmental concern or can pose difficulties, which increase environmental risk during pipeline construction;

2. minimize the extent of wet areas traversed, as they may result in increased potential for environmental impacts and construction difficulties;

3. minimize the number of properties intersected by the RoW where practical in order to minimize the number of affected landowners; and

4. parallel existing utility or transportation corridors in order to reduce environmental impacts and minimize fragmentation of natural habitats and property parcels.

Brunswick Pipeline noted that the primary principle was, where possible, given priority over secondary principles. However, in circumstances where more than one secondary principle was applicable, or where addressing the primary principle would compromise a secondary principle throughout the whole or vast portion of a particular RoW, Brunswick Pipeline balanced the various competing interests to determine the best possible detailed route in each circumstance.

Brunswick Pipeline described the three constraint classes referred to in Table 2-1, as well as their interplay in the RoW selection process. All class 1 constraints were avoided by the RoW except where:

- the constraint traversed the entire corridor and could not be avoided within the confines of the corridor, in which case efforts were made to minimize the crossing distance and potential impacts to the constraint;
- avoiding one class 1 constraint would require intersecting another class 1 constraint, in which case the two options were evaluated and the RoW was located to minimize potential impacts; and
- avoiding a class 1 constraint conflicted significantly with any other secondary principles, in which case the potential impacts to the alternative alignments were re-evaluated.

Table 2-1
Constraints by Class

Class 1 (where mitigation may not be possible)	Class 2 (where mitigation is possible)	Class 3 (where special construction practices may be required)
Blueberry field	Agricultural land	Bedrock (outcrop, shallow)
Raptor nest	Christmas tree plantation	Mineral claim
Ecological site and reserve	Atlantic salmon angling river	Topography (slope >20%)
Salmon spawning habitat	Deer wintering area	Waterbody (<200 metres)
Fish hatchery	Ducks Unlimited site	Sulphide-bearing (acid generating) rock
Landfill site	Old growth forest	
Mine/quarry pit	Land with recreational value	
Mining area	Permanent sample plot	
Historical, or archaeological site	Plantation	
Maliseet or Mi'kmaq spiritual site or sacred place	Traditional hunting, fishing, or gathering site	
Rare amphibians	Recreational area	
Wetland	Significant wildlife habitat	
Area with sinkholes	Area with elevated potential for rare plants	
Limestone/gypsum		
Sugar bush		
School		
Airport runway		
Cemetery		
Church		
Military base		
Municipality/built-up area		
Reservoir		

Class 2 constraints were avoided by the RoW where practical if:

- avoiding a class 2 constraint did not interfere with the primary and other secondary principles; and
- two equal alignments were available to avoid a class 1 constraint, such as a wetland, and only one of the alignments intersected a class 2 constraint, such as a watercourse, then the alignment avoiding the class 2 constraint was selected.

All class 3 constraints were avoided by the RoW where practical.

In addition to the other principles and constraints noted above, Brunswick Pipeline considered the following factors in its detailed route selection process:

- avoiding impacts on buildings, residences, land use, and developed areas;

- ensuring side slopes or steep slopes, in addition to those identified as class 3 constraints, were avoided where practical;
- avoiding transecting corners of properties;
- avoiding bedrock outcrops;
- ensuring the location for crossing other utility corridors does not impact the other utility or the pipeline;
- ensuring the availability of access to the RoW;
- ensuring a 70 – 90 degree crossing angle at roads;
- ensuring a crossing angle as close to 90 degrees at railways, major highways, and watercourses where practical;
- ensuring temporary working room is available at road crossings, railway crossings, watercourse crossings, and for grade cuts;
- minimizing the amount of road and utility crossings, where practical; and
- minimizing the traversing of interior forests.

2.3 Detailed Route Selection Process

Brunswick Pipeline incorporated the concept of establishing fixed "control points" within the corridor. To begin with, the end control points were established at fixed locations, determined by pipeline design criteria, at the Canaport™ LNG Terminal and at the Maritimes and Northeast Pipeline system interconnection. With input and assistance of its field team, Brunswick Pipeline then established intermediate control points or "zones" at locations along the corridor. These control points were selected in accordance with its routing principles, focusing on environmental and construction concerns, especially at watercourse crossings. If more than one location was available for a control point, the upstream and downstream control points were reviewed to determine the best possible location.

Most control points where fixed at watercourse, road, and railway crossings, while other control points were fixed in areas where wetlands, waterbodies, or other physical features restricted access across the corridor. Where two or more routing constraints covering all but a portion of the corridor were encountered, a control zone within which to place the control point was established first. As consecutive control points were chosen, a direct RoW route was selected wherever possible to adhere to the primary principle of minimizing overall pipeline length. The resulting detailed route was then reviewed to determine if any secondary principles or constraints justified modification of the proposed RoW.

Control points, and the initial detailed route alignments between these control points, were selected by the Brunswick Pipeline RoW selection team, consisting of environmental, lands, and engineering personnel. Each initial alignment was then forwarded to a field team (again comprised of environmental, lands, and engineering personnel) for "ground truthing". The field team took into consideration the detailed route selection criteria, balanced competing criteria, and suggested any routing revisions for review by the RoW selection team before the preliminary preferred RoW was finalized. Once finalized, the preliminary preferred RoW was reviewed by

Brunswick Pipeline's environmental consultant and by its management review team to ensure the alignment was acceptable in view of the applicable environmental constraints and to assess, from a broader perspective, the overall suitability of the proposed detailed route.

RoW agents for Brunswick Pipeline then contacted affected landowners to present the preliminary preferred RoW and collect input from concerned landowners to refine the route. Also for the purpose of refining the route, further detailed engineering and environmental studies were conducted to gain a better understanding of the corridor and RoW conditions. Where landowner consent was obtained, members of the route selection team also walked the route with the construction contractor to gain a better understanding of field conditions prior to finalizing the route.

Any further revisions were then incorporated into the final RoW alignment, which was submitted to the Board on 12 July and 7 August 2007 as the PPBoR. Brunswick Pipeline submitted that it made efforts to consult with objecting landowners in an attempt to resolve their detailed route objections. Furthermore, in an attempt to treat all those affected by the proposed detailed route fairly and impartially, Brunswick Pipeline stated that it made reasonable efforts to resolve individual objections in such a way as not to compromise the integrity of its route selection criteria.

Chapter 3

Jurisdiction of the Board to Consider Routes Outside of the Corridor

3.1 Background

In a letter filed 10 December 2007, Galbraith Equipment Co. Ltd. and Galbraith Construction Ltd. (Galbraith) requested that a process be established for the consideration of a route outside of the corridor approved by the Board in the GH-1-2006 Decision on the Brunswick Pipeline Project. The Board ruled, in a letter dated 20 December 2007, that intervenors were not required to commence a review proceeding pursuant to section 21 of the NEB Act[5] in order to have a route outside of the corridor considered, although the Board may require a section 21 determination at some time.[6] The Board further held that intervenors were not restricted to suggesting a route within the corridor in their objections to the proposed route.

The Board went on to state that:

> there may be cases where the Board would want to limit alternate routes to within the approved corridor, such as a situation where the corridor extends for 500m on either side of the proposed route. In that case the Board may take the view that the landowner has sufficient alternatives for a possible route within the corridor to address any concerns there may be. However, in this case, which is not unusual, where the corridor is significantly smaller than that in some places, the Board is of the view that it would limit a landowner's rights under the Act if it were to hold that proposed routes must be within the corridor.
>
> If, at the conclusion of the detailed route hearing and based on the evidence on the record at that time, the Board determines that the route proposed by the landowner is better than that proposed by the pipeline, absent any additional evidence on the alternate route, the Board would not be in a position to approve the plans, profiles and books of reference filed by the company, but would also not be in a position to approve a route proposed by the landowner.
>
> ...the Board would require evidence to conduct an environmental assessment pursuant to the *Canadian Environmental Assessment Act*, to evaluate the proposed route under section 21 of the NEB Act and to be able to make a submission to Governor in Council to recommend an amendment to the certificate issued by the Board.

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5 21 (1) Subject to subsection (2), the Board may review, vary or rescind any decision or order made by it or rehear any application before deciding it.

(2) The Board may vary a certificate, licence or permit but the variation of a certificate or licence is not effective until approved by the Governor in Council.

6 The Board's ruling dated 20 December 2007 is attached as Appendix II.

Both Galbraith and Sierra Supplies Ltd. (Sierra) proposed routes outside of the corridor for the Brunswick Pipeline Project.

3.2 Views of Parties

3.2.1 Brunswick Pipeline

Brunswick Pipeline asserted in its reply evidence filed 21 January 2008 and in argument regarding the Sierra and Galbraith objections that the adequacy of the corridor was properly addressed in the certificate proceeding where the Board clearly turned its mind to the appropriateness of the width of the corridor and found it to be acceptable. It argued that certificate issues should not be reconsidered in detailed route hearings, and that this should include the corridor.

Brunswick Pipeline stated that where the Board has heard evidence on alternate routes outside the corridor, this should be solely for the purpose of assisting the Board in determining whether the applied-for detailed route should be approved. It noted the Board's statement in previous decisions that:

> in the context of considering a specific landowner objection to the detailed route as filed by the [pipeline] company, [the Board] has no jurisdiction to approve the route outside the corridor in the absence of an application by the proponent. The Board will hear evidence on alternate routes outside the corridor for the sole purpose of assisting it in determining whether the proposed detailed route, as applied for by the [c]ompany, should be approved.[7]

A consideration of routes outside the general corridor should, in Brunswick Pipeline's view, be limited to examining the suitability of the location of the pipeline within the corridor. In this way, a route outside the corridor may reveal features that should be considered to determine the best location for the pipeline within the corridor.

Brunswick Pipeline stated that the consideration of alternate routes outside the corridor cannot be open-ended as this would result, essentially, in new, mini certificate-like proceedings, at great prejudice to the applicant given the timelines involved. Further, Brunswick Pipeline noted that while it has agreed to minor variances from the corridor, this has only been where there is a compelling reason for the deviation, all affected landowners were supportive, and the application for a variance could be made in a timely manner that would not affect the project schedule. It argued that it should not now be prejudiced by the fact that it applied for variances to resolve landowner concerns in a timely manner.

While Brunswick Pipeline disagreed with the idea that the Board could consider denying a route within the corridor on the basis of evidence of a better route outside the corridor, Brunswick Pipeline argued that should the Board consider such an approach, the evidence of the superiority

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7 MH-4-98, Sable Offshore Energy Inc., Detailed Route Hearings, Reasons for Decision, October 1998, p. 3. See also, MH-3-98, Maritime & Northeast Pipeline Management Ltd., Detailed Route Hearings, Reasons for Decision, October 1998, p. 3 and MH-1-2005, New Brunswick Power Transmission Corporation, Detailed Route, Reasons for Decision, June 2005, p. 4.

of the route outside the corridor should be overwhelming. It argued that this is not the case before the Board. Further, Brunswick Pipeline contended that it would suffer prejudice if such an approach were taken by the Board. It noted the length of time taken to receive approval of its section 21 variance application and stated that timing for the project will be severely and adversely impacted by a decision that results in the route being "forced" outside the corridor which will result in enormous standby costs and put the projected in-service date in jeopardy.

3.2.2 Sierra

Sierra argued that as the corridor straddles the entirety of the affected landowner's property, it is possible that the best route does not exist within the corridor.

3.2.3 Galbraith

Galbraith argued that to suggest that the corridor can only be altered with the consent of affected landowners would be contrary to the principles of natural justice. It noted that while the Board must determine the best possible route of the pipeline pursuant to section 36 of the NEB Act, that section does not state that the best possible detailed route must be in the corridor. Additionally, it submitted that the corridor for Galbraith Areas 1, 2, and 3 was too narrow. In Galbraith's view, given that Areas 1 and 2 contain a class 1 constraint and with the knowledge of Galbraith's concerns, Brunswick Pipeline was remiss in not allowing for a wider corridor to allow for detailed route selection needs.

With respect to Board determinations in previous cases, Galbraith argued that the past practice of the Board should not unduly restrict the ability of the Board to respond to new matters. Each hearing should be considered based on its own unique circumstances.

3.2.4 New Brunswick Southern Railway Company Limited and Saint John and Maine Railway Co. (the Railways)

The Railways argued that there was no basis for revisiting the corridor approved by the Board in the certificate decision. They submitted that previous decisions have shown that the Board has generally refused to review certificates in detailed route hearings and that doing so would prejudice landowners who participated in the certificate hearing by setting precedent for an unlimited right of rehearing by any landowner who takes issue with the corridor.

3.2.5 Mr. Poley

Mr. Poley argued that if a corridor is narrowed at the certificate stage and a landowner cannot suggest a route outside of the corridor, rather than having less impact on local surroundings, as submitted by Brunswick Pipeline, this would narrow the landowner's choices and have more impact on them. He argued that the certificate hearing is designed to protect collective rights for projects for the well being of Canada and detailed route hearings are designed to protect the landowner, allowing them some ownership over the routing so as to lessen the impact on them.

Views of the Board

In examining the question of whether the Board has the authority to consider a route outside of the corridor to determine the best detailed route for the pipeline, the Board must have regard to the specific language in and statutory scheme of the NEB Act.

The Act states, at subsection 36(1):

> Subject to subsections (2) and 35(5), the Board shall not give approval to a plan, profile and book of reference unless the Board has taken into account all written statements filed with it pursuant to subsection 34(3) or (4) and all representations made to it at a public hearing in order **to determine the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline**. [emphasis added]

The NEB Act does not state that the Board is to determine the best possible detailed route within a corridor. Indeed, the word "corridor" does not appear in the Act. As well, neither the notice provisions (subsections 34(1) and (2) of the Act), nor provisions affording landowners the right to file an objection to the proposed detailed route (subsections 34(3) and (4)), contain any limitations on what the landowner may submit to the Board. The Board is of the view that it cannot limit landowners' rights by reading a narrower interpretation in to section 36 than exists on the face of it, absent a clear statutory scheme that would support this.

The Act contemplates a certificate application and hearing, pursuant to section 52, and a detailed route process, pursuant to sections 33 to 37[8]. At the certificate stage of a proceeding, the Board determines whether a project is in the present and future public convenience and necessity. To do so, the Board considers a number of factors. While the appropriateness of the general route (or corridor) is not an enumerated factor in section 52, the Board's practice is to consider this issue as part of its certificate proceeding, and it did so in GH-1-2006[9]. However, the fact that the Board made the finding in the certificate proceeding that "...the preferred corridor put forward by [Brunswick Pipeline] is appropriate"[10] does not relieve the Board from the requirement in the NEB Act that it determine the best possible detailed route of the pipeline.

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8 Sections 33 to 39 are reproduced in Appendix I.

9 See Hearing Order GH-1-2006, issue 7: "The appropriateness of the general route and general land requirements of the pipeline."

10 GH-1-2006, Emera Brunswick Pipeline Company Ltd., Facilities and Tolls and Tariffs, May 2007, p. 69.

The Board notes that it has indicated in many detailed route hearings that it will not reconsider matters determined at the certificate stage of the regulatory process, such as the need for the pipeline, during the detailed route hearing[11]. This is because many issues considered at the certificate hearing are matters that are not relevant to the Board in determining the best possible route for the pipeline and the most appropriate methods and timing of constructing the pipeline. However, other matters which are considered at a certificate hearing overlap with decisions the Board must make in a detailed route hearing. Timing and methods of construction are considered in a certificate hearing, but are matters that the Board is required, by section 36 of the NEB Act, to decide in a detailed route hearing. Similarly, in the Board's view, the corridor is a matter that, while considered in the certificate hearing, may also be an issue for consideration in a detailed route hearing, particularly when a corridor is narrow and the flexibility for locating the best possible detailed route in a particular location is in issue.

Brunswick Pipeline relied upon previous decisions in which the Board indicated that it does not have the jurisdiction to approve a detailed route for the pipeline outside of the corridor in the absence of an application by the proponent. In those cases, when the Board stated that it did not have the jurisdiction to approve a route outside of the corridor, it is clear that it could not make such a decision unless it had sufficient evidence before it to consider varying the corridor, including: evidence for an environmental assessment under the CEAA, if necessary; the section 33 PPBoR had been filed; the section 34 notices had been served with respect to that route; and the Board had evidence before it regarding the appropriateness of the route outside the corridor. As a result, in those particular circumstances, absent evidence on all of these issues, the Board lacked the statutory authority, or statutory jurisdiction, to *approve* a route outside of the corridor. The Board can only approve or refuse to approve a PPBoR[12] as filed by the pipeline company. It cannot approve a route unless it is filed as part of a PPBoR. However, this does not mean that it cannot consider other routes to determine whether to approve the route applied for. Furthermore, when the Board stated that it did not have the jurisdiction to approve a detailed route outside of the corridor in the absence of an application by the proponent, it did not say that it would not look at routes outside of the corridor. Indeed, in those other decisions, as in this case, the Board considered landowners' suggested routes outside of the corridor to determine whether the route applied for was the best possible route.

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11 See for example, Hearing Order MH-3-2007, p. 2.

12 38. Where the Board has held a public hearing under subsection 35(3) in respect of any section or part of a pipeline and **approved or refused to approve a plan, profile and book of reference respecting that section or part**, it shall forthwith forward a copy of its decision and the reasons therefor to the Minister and to each person who made representations to the Board at the public hearing. [emphasis added]

Consequently, those decisions should not be interpreted as meaning that the Board could not consider routes outside of the corridor in making its determination under section 36. To take such an interpretation would imply that the Board would be impeded in carrying out its mandate under section 36, when no such impediment is evident in the NEB Act.

In addition, should consideration of routes outside of the corridor be prohibited, the Board arguably would be fettered in its ability to consider applications for variance pursuant to section 21 with respect to routes that fall outside of the corridor. There are no limitations in the NEB Act on the Board's ability to review previous decisions. Furthermore, this interpretation is inconsistent with the prior section 21 application by Brunswick Pipeline to vary the corridor set out in GH-1-2006 Decision to allow for the Board to approve routes falling outside of the corridor. The Board was required to consider routes previously outside of the corridor in order to approve the section 21 application and the subsequent PPBoR for those routes.

While Brunswick Pipeline stated that it is the law "that only the Applicant ... can prosecute a variance application"[13], it cited no authority for this proposition. There are no limits in section 21 regarding who can apply for a review of a decision. Indeed, many, if not most, review applications are from parties other than the applicant in the original proceeding. However, if, by this statement, Brunswick Pipeline meant that it is the party that possesses the information to enable the Board to consider an application to review a certificate in order to extend or vary the corridor, the Board believes that is likely true. Further, while another party could bring a review application with respect to a certificate, in the situation at hand, as already stated, the decision on the best possible route, pursuant to section 36, could only be made when the process is commenced *by the pipeline company* by filing a PPBoR.

The Board understands why a company would want the best possible route at the detailed route stage to be found within the corridor, for timing, planning, financial, and other practical reasons. Furthermore, the Board recognizes why a company may choose a narrower corridor at the certificate phase of a project – for example, to minimize the impact on local surroundings during the detailed routing, for timing purposes, to potentially reduce the areal scope of an environmental assessment, or to minimize the concerns raised in a community. However, that choice by the company should not be used to prohibit the Board from the exercise of its mandate under the Act, at the detailed route stage, to determine the best possible detailed route for the pipeline. Furthermore, the choice of a company to select a narrow corridor, within which sufficient flexibility

13 Brunswick Pipeline Reply Evidence on Galbraith Objections, exhibit B-24B, p. 10, lines 6-9. See also Brunswick Pipeline Argument on Galbraith Objections, exhibit B-20B, p. 26, lines 37-38.

during the detailed route phase of a project may not be available, should also not limit the landowner's right to propose, and to have the Board consider (although not approve), an alternate route when determining whether a proposed detailed route is the best possible one.

The Board recognizes that if the proposed route is denied on the basis of evidence of a better route outside of the corridor this could lead to an additional process, for example, a section 21 application to vary the corridor in that location. The Board is not desirous of unnecessary processes; however, it is paramount to remember that what is being considered at this stage in the process are issues of fundamental importance to landowners regarding the use and enjoyment of their lands, in perpetuity. Therefore, it is essential that the appropriate processes occur to ensure that landowner rights are protected and lands are impacted in as minimal a way as possible. While there is no doubt that the Board can determine that such lands can be used by a pipeline company when it is found to be in the public interest to do so, the Board should be loath to impose such a burden on a landowner without affording that person every right and opportunity available under the Act. Property rights should not be interfered with lightly.

When the corridor covers all of the landowner's lands, particularly when it affects a large amount of those lands, as it does for Galbraith Area 1 and Sierra, in the Board's view, the landowner is entitled to make a case in the hearing that the best possible route is a route that may not be on their lands. In such circumstances, to argue that they are limited in what they can suggest to within the corridor, would severely circumscribe their rights. This is because the NEB Act only requires personal notice to landowners at the detailed route stage[14], and therefore it would result in the landowner receiving notice that the pipeline may be on their lands only *after* it is determined, at the certificate proceeding, that the pipeline will be on their lands. In the Board's view, this is not the intent of the statutory scheme and is not consistent with notice requirements, given the significance of the decisions being taken. The Board recognizes that a company may provide notice to landowners prior to the certificate hearing and commends this practice. However, in the Board's view, the regulatory process as set out in the NEB Act is paramount, and that includes a statutory requirement for notice, and this notice must occur at the detailed route stage.

Further, costs are awarded to landowners at the detailed route hearing[15], but not at the certificate hearing stage. Therefore, while the Board

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14 Personal service of a notice of the detailed route is required pursuant to subsection 34(1) of the Act. At the certificate stage of a project, personal notice is not required. Generally, public notice of the certificate hearing occurs thorough the publication of a notice of public hearing in newspapers and the *Canada Gazette*.

15 See section 39 of the Act.

encourages landowners to be involved in the certificate stage and is of the view that many of their issues can be discussed at the certificate hearing. Parliament seems to have addressed its mind to the fact that it is appropriate for landowners whose lands may be acquired to become involved in the regulatory process at the detailed route hearing.

Determining that a landowner can propose an alternate route outside of the corridor does not mean that the Board would consider any alternate route suggested by a landowner, regardless of its location or other circumstances of the case. As the Board indicated in its 20 December 2007 ruling, reasonable limits may be placed on this right to suggest a route outside of the corridor. If the corridor is sufficiently wide that a landowner can propose a route off their lands but still within the corridor, the Board may consider it unnecessary to consider a route outside of the corridor. Similarly, it would be unlikely that the Board would consider a route that is so far away from the corridor as to suggest a completely different project.

Finally, the Board will briefly address Brunswick Pipeline's assertion that should the Board consider denying an applied-for route because there is evidence of a better route outside of the corridor, the evidence that the alternate route is better should be overwhelming. Brunswick Pipeline did not cite any authority for this proposition. The Board has stated in previous cases, and confirms here, that an applicant has the burden of establishing on the balance of probability that the relief sought in its application should be granted.[16]

Next Steps

In the case of a denial of the applied-for route, it would be up to the pipeline company to determine the next course of action, which could include a new proposed route within the corridor, if that is possible, or a section 21 application to revise the corridor to accommodate a new proposed route that falls outside of the existing corridor. Either of these options would require the filing of a PPBoR for a new proposed route. Another option, as noted in the MH-1-99 Detailed Route Hearing Decision, would be for the applicant to seek a section 21 review of the decision to deny the proposed route, and propose the same route again, if the criteria for a review as set out in section 44 of the *Rules of Practice and Procedure, 1995* are satisfied.[17]

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16 See for example, GH-2-87, TransCanada Pipelines Limited, Application for Facilities and Approval of Toll Methodology and Related Tariff Matters, July 1988, pp. 80-81, and RH-R-2-2005, Coral Energy Canada Inc. and the Cogenerators Alliance, Review of RH-2-2004, Phase I Decision, May 2005, pp.3-5.

17 MH-1-99 and MH-2-99, Alliance Pipeline Project, Compendium of Decisions, Saskatchewan and Eastern and Central Alberta, and Northwestern Alberta and Northeastern British Columbia, Detailed Route Hearings, decision regarding Mr. Tymkow, p. 43.

The Board recognizes Brunswick Pipeline's concerns with having to proceed with an application for a section 21 amendment to the certificate, which requires a CEAA determination and Governor in Council approval. All of these steps take time to accomplish. However, these concerns are not grounds for denying a landowner the opportunity to present their case that a better route exists outside of the corridor.

Conclusion

For all of these reasons, the Board is of the view that it has the authority to consider a route outside of the corridor, for the purpose of determining the best possible detailed route of the pipeline and whether to approve or refuse to approve a PPBoR applied for by the pipeline company.

Chapter 4

Landowner Objections

4.1 Galbraith Equipment Co. Ltd. Area 1 (PID 00409011) and Area 2 (PID 00408294)

4.1.1 Background

Galbraith Equipment Co. Ltd. (Galbraith or Galbraith Construction) filed letters of opposition to the proposed Brunswick Pipeline route on PID 00409011 and PID 00408294 (see Figure 4-1). Portions of these properties are zoned "PQ – Pits and Quarries" pursuant to the zoning by-law of the City of Saint John. This is the only gravel and aggregate pit on the west side of the City of Saint John, and Galbraith operates the pit to remove several types of material, including pitrun gravel, manufactured gravels of different sizes, sand, manufactured sand, various types and classes of clay, and manufactured topsoil. The letters of opposition were set down for hearing by the Board on 26 November 2007.

In its letters of opposition dated 20 September 2007, Galbraith proposed an alternate route for the pipeline, located outside of the corridor on the lands of New Brunswick Southern Railway Company Limited (NB Southern) and Saint John and Maine Railway Co. (Saint John & Maine). In a letter filed 10 December 2007, Galbraith requested that the Board provide a process for the assessment of the proposed alternate route outside of the corridor, pursuant to section 21 of the NEB Act and the CEAA. The Board indicated in a letter dated 20 December 2007 that Galbraith could suggest a route outside of the corridor without being required to commence a section 21 process. In a separate letter dated 20 December 2007, the Board directed Brunswick Pipeline to serve information regarding the detailed route hearing on NB Southern, Saint John & Maine, and any landowner that it could identify who might be affected by the route Galbraith proposed. This direction was provided in order to ensure that as many landowners whose lands could be affected by routes proposed by landowners in the detailed route hearing received notice of the hearing and were aware of the proposal by Galbraith. The following persons applied for and were granted intervenor status in the detailed route hearing after being informed of Galbraith's proposed alternate route for the pipeline:

- Mr. Clayton Edward Poley and Ms. Deborah Marie Poley;
- Mr. Samuel Wilkes and Ms. Vicki Wilkes;
- Mr. William Thompson;
- Mr. Wallace Nason and Ms. Heather Richard;
- Mr. Paul E. Watson and Ms. Violet E. Watson;
- Mr. Laurie Garfield and Ms. Annette Garfield;
- Ms. Anna M. O'Hara;

Figure 4-1
Galbraith Areas 1 and 2

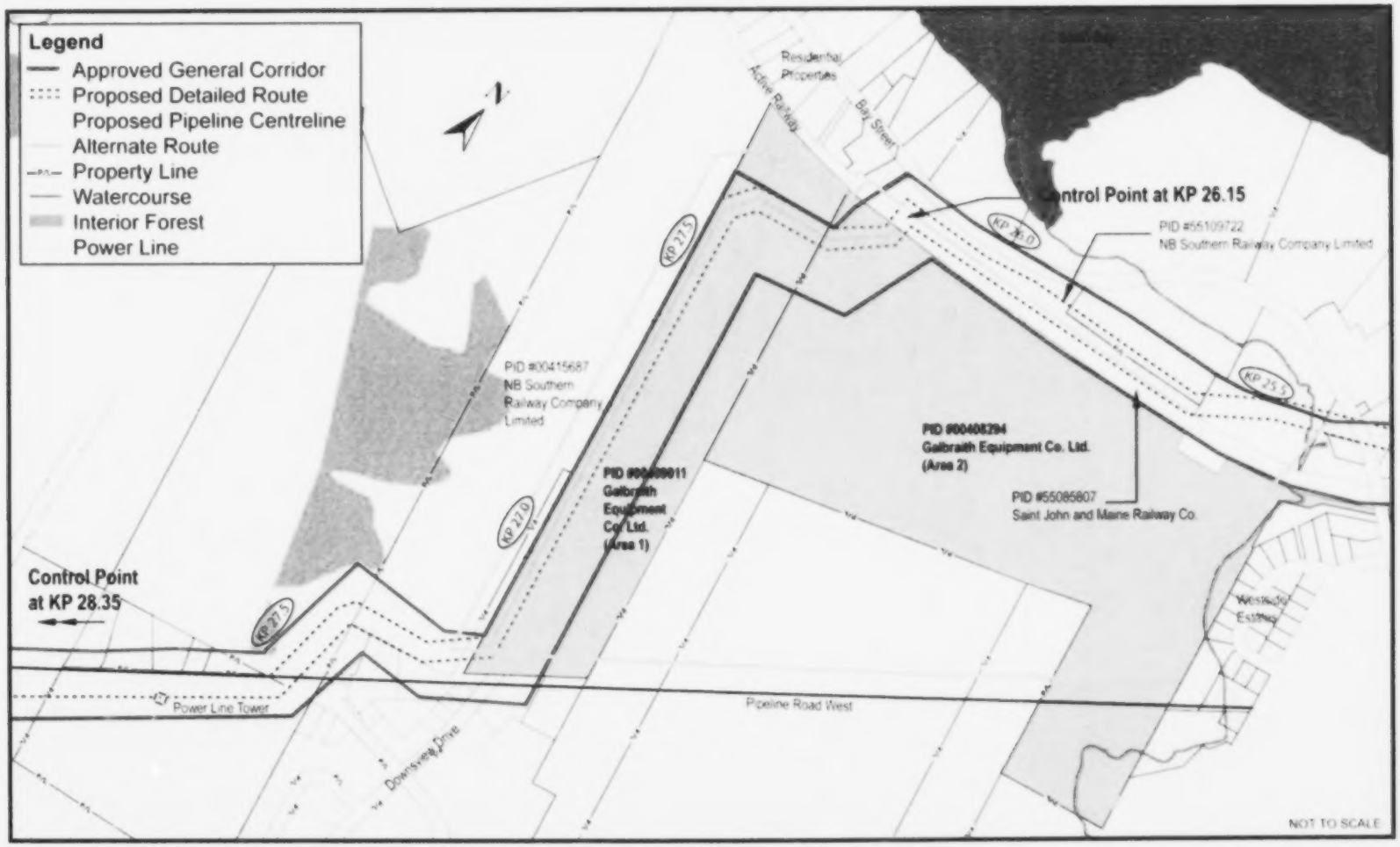


Figure 4-1
Galbraith Areas 1 and 2

- Mr. Kamal Mydean;
- NB Southern; and
- Saint John & Maine.

The oral hearing for Galbraith was held from 28 to 31 January 2008 in Saint John, New Brunswick. Subsequent to the oral hearing, a process was established to allow for written argument. The hearing for Galbraith concluded on 19 February 2008 with Brunswick Pipeline filing its written Reply Argument on the Galbraith objections.

4.1.2 Brunswick Pipeline's Proposed Route

Area 1 (PID 00409011) and Area 2 (PID 00408294) are adjacent properties located in Saint John, New Brunswick. The northern portion of Area 1 and all of Area 2 are zoned "PQ – Pits and Quarries" pursuant to the zoning by-law of the City of Saint John. The gravel and aggregate pit operates within a suburban context with residential development expanding to the south and east. The proposed route would cross the northwest corner of Area 2, approximately between kilometre post (KP) 26.2 and KP 26.3. The proposed route would generally follow along the western property line of Area 1 in a north to south alignment, approximately between KP 26.4 and KP 27.2.

Brunswick Pipeline submitted that the principal constraints in the area are: residences; an active railway; and current and future aggregate pit operations. The upstream control point occurs at KP 25.05 at the Saint John & Maine multiple railway crossings, which allows for a perpendicular crossing closest to the western limit of the rail yard property while remaining within the corridor. An intermediate control point for the Galbraith properties occurs at KP 26.15 at the Saint John & Maine crossing. Brunswick Pipeline stated that this crossing location occurs on relatively level ground, avoids impacts to residential properties, and limits the impacts on Area 2, which is an active gravel and aggregate pit. The downstream control point from the Galbraith properties occurs at KP 28.35 at the crossing of the Route 7 on-ramp.

Brunswick Pipeline submitted that the proposed route minimizes impacts to Galbraith's future aggregate resources because, as was confirmed in Galbraith's letters of opposition, Brunswick Pipeline's proposed route is not in a working portion of Galbraith's pit in either area. Regarding Area 1, Brunswick Pipeline submitted that this is a licensed gravel and aggregate pit and that the property extends across the entire width of the corridor so it cannot be avoided when selecting a detailed route. Regarding Area 2, Brunswick Pipeline submitted that a relatively small corner would be affected by the proposed route and this section of the property is not currently active for aggregate excavation. For both Areas 1 and 2, Brunswick Pipeline recognized the potential impact on the future ability to excavate aggregate resources in the area of the proposed pipeline route and submitted that this is a compensatory issue outside the scope of the detailed route hearing.

4.1.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.1.3.1 Brunswick Pipeline

At the original project application stage, Brunswick Pipeline submitted that there were not a lot of options in regards to where it could locate its proposed 100 metre wide general route corridor through this area. Brunswick Pipeline considered the possibilities of going to the north or to the south of the Galbraith Construction properties. During the general corridor selection process, Area 1 was not an active area for excavation activities and there was a municipal by-law restricting the excavation of aggregate resources within 30 metres of property lines. Brunswick Pipeline submitted that this, combined with input from Galbraith Construction in October 2005, appeared to its route selection team to be a major factor in placing the general corridor in this area. It was only after the 7 August 2007 PPBoR filing with the Board that the City of Saint John granted conditional relief to Galbraith regarding the municipal by-law. There has recently been some quarrying activity in the Galbraith Area 2 property close to the proposed railway crossing at KP 26.15; however, Brunswick Pipeline submitted that activity in this area does not reduce the viability of its proposed route.

Brunswick Pipeline submitted that its proposed route in this area was chosen after considerable review. In addition to remaining within the corridor, Brunswick Pipeline submitted that its proposed route:

- has a good railway crossing with a flat approach and separation from residences;
- has a good crossing of Burnside Brook;
- avoids wet areas;
- avoids residential areas;
- abuts property lines to avoid fragmenting property interests;
- minimizes the clearing of remnant forest;
- has no significant constructability issues;
- does not introduce new property owners or other potentially affected parties; and
- minimizes the crossing of an active pit area.

Brunswick Pipeline submitted that a portion of Area 1 is a licensed pit that is not currently active for aggregate extraction; however, Brunswick Pipeline has recognized the potential impact to aggregate resources in the area of the pipeline route. One of the options for mitigating the effect on Galbraith's inactive pit would be to extract the materials before building the pipeline and to stockpile them away from the pipeline area so that the area is pre-extracted before the pipeline is built. Brunswick Pipeline stated that it is also willing to work with Galbraith to develop a plan for possible excavation within the 40 metre safety zone. Another option for mitigating the effect on Galbraith's inactive pit would be through compensation. According to Brunswick Pipeline, any impact the pipeline may have on the ability to excavate in the area is a compensable issue, and Brunswick Pipeline is willing to provide fair compensation for any business, crop, aggregate, or other losses.

Brunswick Pipeline submitted that it is able to address any potential impacts caused by the construction and operation of the pipeline on groundwater and surface water because of previous experience with similar situations, the presence of professionals during construction, the availability of mitigation measures, the existence of monitoring programs, and the ability to design a solution after construction is complete. In addition, now that local landowners have identified concerns regarding groundwater, Brunswick Pipeline will be better prepared to ensure that the quality of wells in the area is as good, if not better, than what existed prior to construction.

Brunswick Pipeline further submitted that the impact to potential future residential lots as proposed by Galbraith Construction is also a compensatory issue, which is outside the scope of the detailed route hearing.

4.1.3.2 Galbraith

Galbraith Construction argued that the fundamental problem with Brunswick Pipeline's proposed route is that it artificially ignores a gravel and aggregate pit, which is a class 1 constraint, by claiming that a portion of the gravel and aggregate pit is licensed but inactive. Galbraith submitted that there is only one gravel and aggregate pit and any currently inactive portions will be active in the future. In order to support this position, Galbraith filed the Excavation Permit from the City of Saint John dated 18 January 2008, which allows the excavation of Area 2 and a portion of Area 1 and lists both properties on the same permit.

Galbraith further submitted that if Brunswick Pipeline's proposed route is approved then approximately 850 000 cubic metres of materials will be lost due to the area in the gravel pit over which excavation will be prohibited, assuming excavation up to the edge of the easement with a 3:1 slope. According to Galbraith, Brunswick Pipeline's proposed route would negatively affect the sustainability of its business by reducing the number of years of future operation for the gravel and aggregate pit.

One of the rationales advanced by Brunswick Pipeline for placing its proposed route along the western property line of Area 1 was that this area could not be excavated because of a City of Saint John by-law. However, Galbraith submitted that Brunswick Pipeline did not check with the City of Saint John as to the zoning of the property nor to the actual practice for resource extraction within a defined setback area. Galbraith recently obtained a variance from the Planning Advisory Committee of the City of Saint John that reduces the minimum distance required between excavation and the western boundary of Area 1 from 30 metres to zero.

Brunswick Pipeline representatives suggested removal of the aggregate prior to pipeline construction; however, the area where the pipeline would be located is at the back of the pit and is not currently being worked. Moreover, the removal and stockpiling would be costly, would be disruptive to the operation of the rest of the pit, and could contaminate the product, some of which is clay used for landfill and lagoon liners that has to be worked at optimum moisture levels which are found when the material is in an undisturbed state. Galbraith further submitted that, given the sensitivities associated with stockpiling clay and the limited amount of demand for clay, it would take approximately 10 years to remove the material in Area 1 that would be affected by the construction of the pipeline.

In its initial meetings with Brunswick Pipeline, Galbraith stated that it was shown proposed RoW locations and Galbraith, upon expressing its disagreement with these locations, was informed that it would have a chance to object and in the meantime its concerns would be considered. However, no mention was made of a general route corridor which, once approved by the Board, could not be moved or moved only under very limited conditions and with the consent of other landowners. Galbraith was also not advised with respect to Area 1 that the entire general route corridor was on its property. Galbraith submitted that given its knowledge of Galbraith's concerns, Brunswick Pipeline was remiss in not allowing for a wider general route corridor in anticipation of future detailed route selection needs.

4.1.4 Galbraith's Proposed Alternate Routes

Galbraith Construction submitted that the gravel and aggregate pit is the economic lifeline of the Galbraith group of companies, which employs approximately 60 people, and it is a resource that has been carefully managed for approximately 25 years. It is estimated that there is enough material in this gravel pit to provide the Galbraith group of companies with material for an additional 15 to 20 years. It stated that the estimated costs, including fuel and trucking, to obtain material from alternate sources at least 20 kilometres away would be substantial.

The long term plan is to use the properties for residential development once the material source has been depleted. Galbraith submitted that future residential development is a realistic and viable use of the property, that this future development is recognized in the municipal plan of the City of Saint John, and that residential development plans have been in place since 1975.

In its letters of opposition, Galbraith Construction suggested an alternate route to the north and west of the proposed route, bypassing the Galbraith lands entirely (NW Alternate). In its evidence filed on 14 January 2008, Galbraith also identified a southeast alternate route (SE Alternate).

The NW Alternate begins to deviate from Brunswick Pipeline's proposed route at approximately KP 26.15 and then generally parallels Brunswick Pipeline's proposed route but is offset 50 to 100 metres to the north and west of this route. The NW Alternate is proposed to traverse the eastern edge of the NB Southern storage and rail yard and rejoin the Brunswick Pipeline proposed route at KP 27.2, just north of Pipeline Road West.

The SE Alternate begins to deviate from Brunswick Pipeline's proposed route at approximately KP 25.5, then heads south towards Pipeline Road West, and then follows along the north side of Pipeline Road West to rejoin the Brunswick Pipeline proposed route at KP 27.2.

4.1.5 Views of Parties on Galbraith's Proposed NW Alternate Route

4.1.5.1 Brunswick Pipeline

Brunswick Pipeline submitted that Galbraith's NW Alternate:

- is located almost entirely outside the corridor;
- is marginally longer than Brunswick Pipeline's proposed route;

- passes closer to an established residential neighbourhood (Bay Street);
- affects one more property;
- does not follow property boundaries, as there is some separation from the property boundary between the NB Southern and Galbraith lands, thus fragmenting that property and exacerbating the land use impact on that property;
- is closer to an interior forest;
- parallels an existing utility for a greater length;
- does not have affected landowners' consent; and
- involves an inferior railway crossing.

Brunswick Pipeline investigated the potential of the NW Alternate with NB Southern, which was decidedly unsupportive of Galbraith's NW Alternate. Brunswick Pipeline submitted that it pursued variances to its corridor only if a superior route was identified and all affected landowners were supportive, so in this case Galbraith's NW Alternate did not meet this test. In its Reply Argument, Brunswick Pipeline maintained that even with permission from NB Southern, Brunswick Pipeline would have continued to consistently apply its route selection criteria, and at the end of the day it would not have arrived at an inferior route such as Galbraith's NW Alternate.

4.1.5.2 Galbraith

Galbraith Construction submitted that its proposed NW Alternate:

- is only 55 metres longer than Brunswick Pipeline's proposed route;
- has no environmental class 1, class 2, or class 3 constraints;
- crosses one additional landowner; and
- parallels an existing railway corridor for an additional 100 metres.

Galbraith Construction submitted that the land to the west owned by NB Southern would be a more suitable location for the pipeline because it is relatively flat compared to the Galbraith land and it is a depleted non-operating pit which has been used for several years for storage and as a railroad "Y" to turn locomotives. From a safety perspective, Galbraith submitted that it would be better to locate the pipeline within a storage yard as opposed to a licensed gravel pit because working around a pipeline in a gravel pit would be hazardous and cumbersome.

According to Galbraith, the NW Alternate does not have a significantly inferior railway crossing when compared to the proposed route because there is sufficient room from residences and there are ways to respond to the temporary working room issue, some of which have not been explored by Brunswick Pipeline.

The NW Alternate was seen by Galbraith as being inferior to the SE Alternate as it would encroach on a viable residential lot owned by NB Southern and pass by a sensitive residential community, albeit a safe distance away from the gas pipeline. Galbraith further submitted that

the NW Alternate conforms to the generally accepted setbacks for housing from major gas pipelines, which should address the concerns of any residents over the safety of residing close to a gas pipeline.

4.1.5.3 Intervenors

The intervenors who own property in the Bay Street area objected to Galbraith's NW Alternate because of concerns that moving the pipeline closer to the homes in the area could affect their wells and septic systems and could be detrimental to their quality of life. The primary concerns of these landowners related to the potential of the NW Alternate to directly affect their property, its value, their wells, their drinking water, their safety, their ability to sell their house, loss of projected increased value in their homes, loss of future land use, the daily noise and interruption during preparation and construction, impacts to local drainage, and their peace of mind.

During the hearing, intervenors discussed issues such as the depth of burial for the pipeline, methods of construction for the pipeline, topography of the lands in the area, local soil conditions, local groundwater and surface water characteristics, the drainage patterns in the area, and the relationship between these issues and the landowners' concerns. Several parties indicated that they have problems with too much water on their lands or that they have concerns about the quality of water for their wells and wanted to be sure that the construction and operation of the pipeline would not exacerbate these problems.

The landowners were not interested in having the pipeline located any closer to their properties than Brunswick Pipeline's proposed route, and a number of the landowners expressed a preference for the SE Alternate because of the increased separation between the pipeline and their properties.

NB Southern and Saint John & Maine objected to Galbraith's NW Alternate because:

- it is outside the corridor;
- it deviates from abutting a property line which results in greater land fragmentation;
- the location unreasonably interferes with the economic viability of future development lands;
- it is required to pass closer to established residential neighbourhoods, thus potentially impacting wells and drinking water;
- it is closer to an interior forest; and
- it does not have the consent of affected landowners.

4.1.6 Views of Parties on Galbraith's Proposed SE Alternate Route

4.1.6.1 Brunswick Pipeline

Brunswick Pipeline submitted that Galbraith's SE Alternate:

- is located a significant distance outside the corridor;
- is shorter than Brunswick Pipeline's proposed route;

- parallels an existing utility for a greater length;
- has significant construction difficulties associated with an extremely inferior railway crossing;
- passes closer to a developed residential neighbourhood;
- introduces new landowners and new affected parties; and
- crosses more of an active gravel pit.

Brunswick Pipeline submitted that there was a comprehensive process to establish both the corridor and the detailed route, and that when considering the final route everything should be taken into total consideration and balanced in order to determine if the route is appropriate. This is important because while modifications may improve the SE Alternate in one aspect, such as the railway crossing, they may well result in an inferior route in another respect, such as crossing more of an active gravel pit. Brunswick Pipeline further argued that any possible adjustments to Galbraith's SE Alternate are not understood or tested, their acceptability to Galbraith is unknown, and there is no evidence to establish that even with adjustments, any modified route would be better than Brunswick Pipeline's proposed route.

Brunswick Pipeline noted that the portion of Area 2 that would be crossed by the SE Alternate is not a mined out gravel pit with a flat bottom, so work would be required to prepare the area for construction of a pipeline.

4.1.6.2 Galbraith

Galbraith Construction argued that its SE Alternate:

- is shorter than Brunswick Pipeline's proposed route;
- is located outside the corridor, however, distance outside this corridor should not matter;
- is located a substantial distance from a developed residential neighbourhood;
- follows an existing utility corridor for more than twice the length of Brunswick Pipeline's proposed route; and
- has constructability issues that can be addressed.

Galbraith stated that it is prepared to allow the SE Alternate route to cross its property along the eastern edge of the pit because it is largely depleted, and remaining material could be excavated and stockpiled fairly quickly, as necessary. Galbraith submitted that the SE Alternate is the least obtrusive from its point of view, and it is willing to volunteer this property for a pipeline RoW in order to get the long term planning context in place.

4.1.6.3 Intervenors

Some of the Bay Street residents support Galbraith's SE Alternate, as it would move construction away from an area that is reliant on wells and septic systems to an area that is serviced with municipal water and sewage.

NB Southern and Saint John & Maine objected to Galbraith's SE Alternate mainly because the suggested railway crossing is inferior to that required for Brunswick Pipeline's proposed route.

Views of the Board

The Board is of the view that the northern portion of Area 1 zoned "PQ – Pits and Quarries", together with all of Area 2, represents one gravel and aggregate pit. The fact that the gravel and aggregate pit is located on two different properties is not a reasonable justification for Brunswick Pipeline to classify part of the pit as active and another part of the same pit as inactive. This is particularly true when, as acknowledged by Brunswick Pipeline, both properties are listed on the same Excavation Permit. There are currently operational activities occurring in this pit, and these activities are expected to continue for an additional 15 to 20 years. It is within this context that the Board considered whether the methods and timing of construction are appropriate and whether Brunswick Pipeline's proposed route is the best route.

Regarding the methods of construction, the Board notes the concerns raised by the Bay Street landowners about potential impacts on the quality and quantity of groundwater and surface water. The Board further notes that a pipeline is a relatively shallow intrusion into the ground and that Brunswick Pipeline has experience in similar situations. Given the multiple layers of protection offered by Brunswick Pipeline to address any potential impacts caused by the construction and operation of the pipeline to groundwater and surface water, the Board is of the view that the methods of construction are appropriate.

Regarding the timing of construction, the Board notes Brunswick Pipeline's suggestion regarding the removal of all material from the area of the gravel and aggregate pit that would be affected by the proposed route, prior to the construction of the pipeline. The Board further notes Galbraith's estimated timeline of approximately 10 years to remove this material given the sensitivities associated with stockpiling clay and the limited demand for clay. The timing of construction proposed by Brunswick Pipeline in order to meet an in-service date of November 2008 clearly does not allow for a 10 year delay in construction; therefore, this has been factored into the consideration by the Board of whether Brunswick Pipeline's proposed route is the best route.

Regarding the consideration of whether Brunswick Pipeline's proposed route is the best route, the Board notes the concerns associated with locating a pipeline in a gravel and aggregate pit. Brunswick Pipeline acknowledged that safety is a concern within an active gravel and aggregate pit because of the potential for excavation in the vicinity of the pipeline, which could expose the pipeline and possibly damage it. Brunswick Pipeline's land use selection criteria were designed to avoid locating a pipeline in an active gravel and aggregate pit. The concerns about safety are valid; this is why section 81 of

the NEB Act prohibits mining within 40 metres of a pipeline without leave of the Board. The concerns about the presence of the pipeline and the impact the restrictions on excavating gravel in the area of the pipeline could have on the Galbraith business are also valid and have the potential to be greater than those discussed during the detailed route hearing. The parties assumed that excavation would be restricted from the edge of the 30 metre easement with a 3:1 slope down to floor level; however, an additional 40 metre wide safety zone would exacerbate the business impacts by further reducing the quantity of materials available for extraction. It cannot be assumed that leave of the Board to excavate up to the edge of the pipeline RoW would be granted. Such a decision would have to be made based on an application with all of the facts, and only made if there were no safety concerns.

The key question regarding business impacts is whether this is a compensatory issue. The Board is of the view that compensation is not an appropriate mechanism to address the negative business impacts of the pipeline on Galbraith's operations given the presence of an active gravel and aggregate pit, the nature of the potential impacts to Galbraith's business, and the existence of potential alternate routes. The gravel and aggregate pit is an ongoing business operation, which in the Board's view is significantly different from conceptual business plans or conceptual development plans that may or may not be implemented at some point in the future. The nature of the potential impacts can be summarized by Mr. Galbraith's statements that the pit is the economic lifeline of the Galbraith group of companies and while the construction of the pipeline along Brunswick Pipeline's propose route would not mean the closing of the company in the immediate future, it would precipitate the demise of the company. These potential impacts would be experienced by the company, by the approximately 60 employees, and by Galbraith's customers for multiple years because the gravel and aggregate pit is expected to provide material over a period of 15 to 20 years. It would be relatively straightforward to calculate the amount of compensation for the loss of aggregate material, but it becomes difficult to determine an appropriate level of compensation for the negative business impacts on Galbraith's operations over multiple years and equally difficult to provide adequate compensation to all of the different potentially affected parties. In this situation, the Board might have been inclined to consider compensation as an appropriate mechanism if there were no viable alternate routes; however, the Board is of the view that viable alternate routes do exist.

The Board is of the view that the SE Alternate, assuming modifications for an appropriate railway crossing and adequate separation from watercourses and residences, may be better than Brunswick Pipeline's proposed route because:

- it minimizes impacts to an active gravel and aggregate pit;
- it minimizes disruption of an ongoing business operation;

- it passes through an extinguished part of the gravel and aggregate pit, and Galbraith Construction appears willing to accommodate the pipeline in this area;
- Galbraith Construction is currently using this land to store material, which could be moved;
- it parallels Pipeline Road West, an existing utility corridor; and
- it is approximately 300 metres shorter than Brunswick Pipeline's proposed route.

The Board is of the view that the NW Alternate, assuming the pipeline would not be moved any closer to the residences of the Bay Street landowners, may be better than Brunswick Pipeline's proposed route because:

- it minimizes impacts to an active gravel and aggregate pit;
- it minimizes disruption of an ongoing business operation;
- NB Southern is currently using its land for storage; and
- while NB Southern has future development plans for a subdivision, it has not commenced any work in this regard.

Given the potential impacts on Galbraith Construction's ongoing business operations and the existence of viable alternate routes, such as the SE Alternate and the NW Alternate, incorporating the further modifications discussed during the detailed route hearing, Brunswick Pipeline has not persuaded the Board that the route applied for is the best possible route.

Decision

Based on the evidence before it, the Board finds that the route proposed by Brunswick Pipeline with respect to Areas 1 and 2 has not been demonstrated to be the best possible route for the pipeline. In the Board's view, while further evidence would be required to determine what the best route for the pipeline is, a better route appears to be either:

- **a southeast alternate similar to that proposed by Galbraith Construction and altered as discussed in the hearing; or**
- **a northwest alternate similar to that proposed by Galbraith Construction with the exception that the northwest portion should not locate the pipeline any closer to the residents of Bay Street.**

4.2 Galbraith Construction Ltd. Area 3 (PID 00403709 and PID 00403618)

4.2.1 Background

Galbraith Construction Ltd. (Galbraith) filed a letter of opposition to the proposed Brunswick Pipeline route on PID 00403709 and PID 00403618 (see Figure 4-2) which was set down for hearing by the Board on 26 November 2007.

The oral hearing for Galbraith was held from 28 to 31 January 2008 in Saint John, New Brunswick. Subsequent to the oral hearing, a process was established to allow for written argument. The hearing for Galbraith concluded on 19 February 2008 with Brunswick Pipeline filing its written Reply Argument on the Galbraith objection.

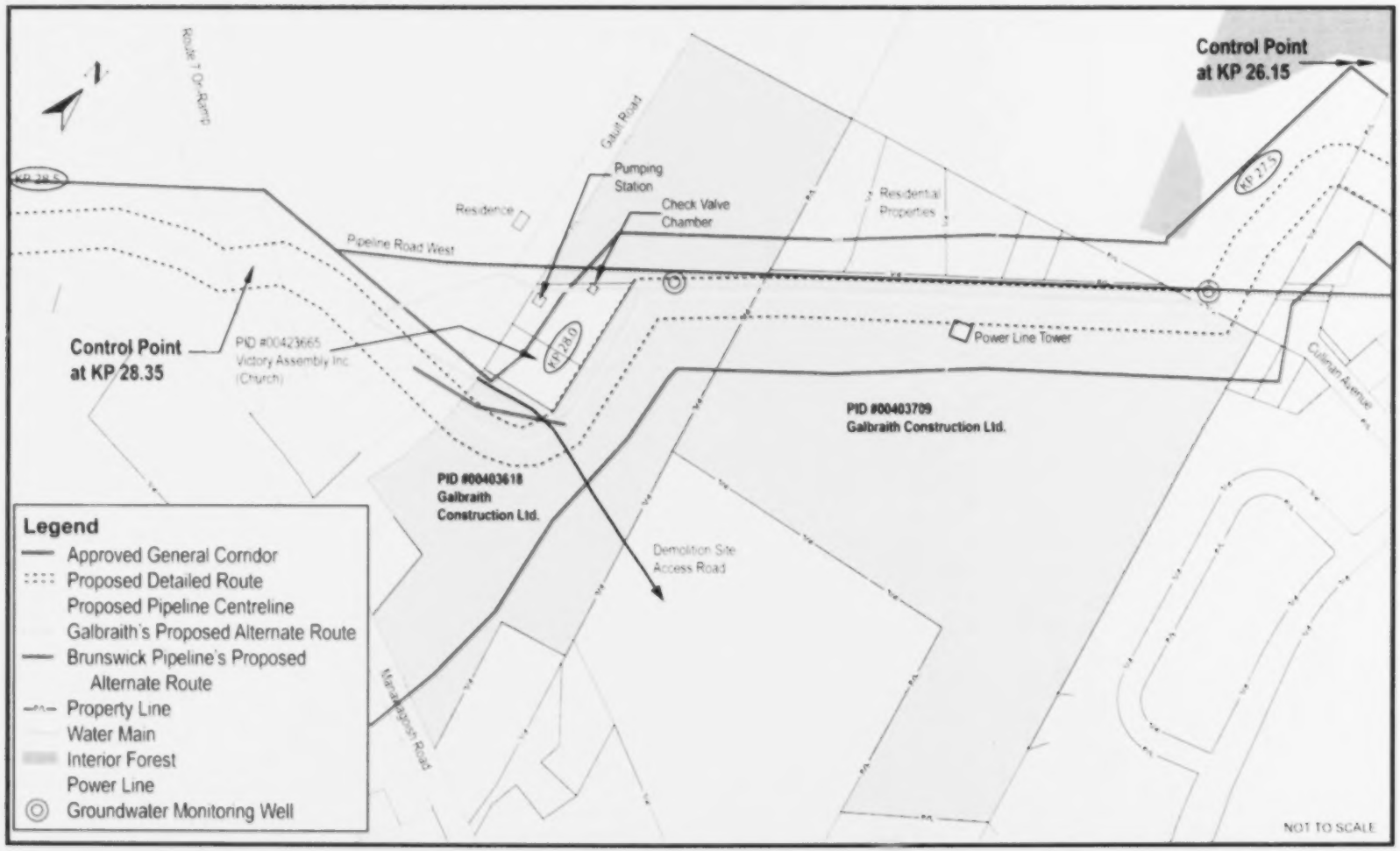
4.2.2 Brunswick Pipeline's Proposed Route

Area 3 consists of two adjacent properties (PID 00403709 and PID 00403618) located in Saint John, New Brunswick. These two properties form an area that is licensed by the Province of New Brunswick as a Construction and Demolition Debris Disposal Site (the disposal site). Brunswick Pipeline's proposed route begins to parallel the southern boundary of Pipeline Road West, in a northeast to southwest alignment, at approximately KP 27.6. At approximately KP 27.9, Brunswick Pipeline's proposed route heads south, crosses an access road and then aligns for a 90 degree crossing of Gault Road.

Brunswick Pipeline submitted that the principal constraints in the area are: residences and other buildings; and buried and aboveground utility infrastructure. The upstream control point occurs at KP 26.15 at the Saint John & Maine railway crossing. Brunswick Pipeline contended that this crossing location occurs on relatively level ground, avoids impacts to residential properties, and, as much as practical, limits the impacts on the active gravel and aggregate pit (PID 00408294, which is Area 2). The downstream control point from the Galbraith properties occurs at KP 28.35 at the crossing of the Route 7 on-ramp. This allows for perpendicular crossing of the Route 7 on-ramp while paralleling an existing utility corridor.

Brunswick Pipeline's routing rationale in this area was to generally follow the existing transportation corridor along Pipeline Road West to the extent practical, consistent with Brunswick Pipeline's secondary routing principle. The route minimizes the number of properties intersected by the pipeline RoW as much as practical, and avoids residential properties. Brunswick Pipeline also took into account three active water mains, including a 1.5 metre diameter transmission main, that are located along Pipeline Road West.

Figure 4-2
Galbraith Area 3



4.2.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.2.3.1 Brunswick Pipeline

Brunswick Pipeline noted that Galbraith's access road for the disposal site is not used consistently on a daily basis, and that Brunswick Pipeline's construction methods and timing can be adjusted to minimize any impacts on access to the disposal site. Brunswick Pipeline submitted that its pipeline will be designed so as not to impede use of this existing access by vehicle traffic.

Brunswick Pipeline noted Galbraith's concerns regarding the potential for damage to existing groundwater monitoring wells in Area 3. The conclusion of the Jacques Whitford Environmental and Socio-Economic Assessment for the Brunswick Pipeline Project [18] was that the presence of the pipeline is not anticipated to significantly affect groundwater flow, and hence, the construction and operation of the Brunswick Pipeline should not affect the ability of these monitoring wells to function as intended. Regardless, Brunswick Pipeline submitted that any damage to these monitoring wells would be repaired by Brunswick Pipeline as soon as practical after pipeline installation in the area by using pre- and post-construction evaluations of monitoring wells to verify the integrity of these wells.

Brunswick Pipeline submitted that any impacts to the future land use and road frontage of Galbraith's properties are compensatory items appropriately dealt with outside the detailed route hearing process.

One of Brunswick Pipeline's defined routing criteria is to minimize any conflicts with utilities. Brunswick Pipeline submitted that this is done in order to minimize potential impacts on the City of Saint John's facilities and the operation of these facilities. Along Pipeline Road West from KP 27.6 to KP 27.9, Brunswick Pipeline's proposed route is located adjacent to the southern boundary of Pipeline Road West and maintains adequate separation from the existing utilities located along Pipeline Road West. The reason that Brunswick Pipeline's proposed route deviates to the south of Pipeline Road West at approximately KP 28.0 is also to avoid significant municipal infrastructure in the area, including an aboveground pumping station and an aboveground check valve chamber.

4.2.3.2 Galbraith

Brunswick Pipeline's proposed route crosses Galbraith's disposal site access road connecting with Gault Road, which according to Galbraith would have adverse impacts on the operation of the disposal site and would result in the loss of valuable road frontage.

The southern portion of PID 00403618 is also used as a storage yard, which Galbraith submitted will be developed after reclamation into a business park or residential use. According to Galbraith, Brunswick Pipeline's proposed route would eliminate most of, if not all, such potential use.

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18 Jacques Whitford, Environmental and Socio-Economic Assessment for the Brunswick Pipeline Project, May 2006, Page 264 (filed as Exhibit B-1F in the GH-1-2006 certificate proceeding).

Galbraith submitted that the northern portion of PID 00403709 adjacent to Pipeline Road West has long been intended for eventual residential use. Presently this portion of the property is used as a buffer for the licensed disposal site; however, once the disposal site is full there would no longer be a need for the buffer. Galbraith asserted that if Brunswick Pipeline's proposed route is approved then future residential use would be lost as the potential lots would be forced further south onto land not suitable for such development due to a sharp drop in elevation.

4.2.4 Galbraith's Proposed Alternate Routes

Galbraith submitted that the monitoring wells for the disposal site could be adversely affected if the natural groundwater flow through the properties to these wells is disturbed, which would be significant because the wells are central to the environmental monitoring of the site.

Along the northern boundary of PID 00403709, Galbraith submitted that the pipeline RoW should be restricted to a 20 metre wide RoW adjacent to the water transmission main RoW with the use of Pipeline Road West as temporary working room. Galbraith further submitted that this overlapping 30 metre wide strip, composed of a 20 metre wide permanent RoW and 10 metres of temporary working room, could satisfy Brunswick Pipeline's apparent policy to acquire 30 metres of total temporary working room for construction of the pipeline. Regarding the operation of the pipeline with a 20 metre wide permanent RoW, Galbraith cited provincial guidelines that establish a generally accepted setback of 20 metres for housing from major gas pipelines. These variations are in comparison to the 30 metre wide RoW associated with Brunswick Pipeline's proposed route.

Galbraith submitted that Brunswick Pipeline's proposed route along Pipeline Road West simply needs minor adjustment to ensure that it is installed in the narrowest, most direct route avoiding the church as well as the access road for the disposal site. If this is not possible, Galbraith recommended deep burial of the pipeline.

Galbraith submitted two alternate routes for crossing Gault Road: a north crossing and a south crossing. The north crossing follows along the same alignment as Brunswick Pipeline's proposed route until approximately KP 27.9, then deviates to continue paralleling the southern boundary of Pipeline Road West, exits the corridor at approximately KP 28.0, crosses Gault Road at a perpendicular angle and then generally heads in a southerly direction where it rejoins Brunswick Pipeline's proposed route between Gault Road and Route 7. The south crossing follows along the same alignment as Brunswick Pipeline's proposed route until approximately KP 28.0 and then deviates slightly to be perpendicular to Gault Road and to follow immediately alongside the property line of PID 00423665 (church property whose title on record at the time of the hearing was Victory Assembly Inc.). The south crossing would pass closer to the church property on a 20 metre wide RoW, on the north side of the disposal site access road and would, in Galbraith's view, require deep burial of more than 1.5 metres to assure safe operation of the pipeline.

4.2.5 Views of Parties on Galbraith's Proposed Alternate Routes

4.2.5.1 Brunswick Pipeline

With respect to Galbraith's proposed alternate route paralleling Pipeline Road West with a RoW width of 20 metres, Brunswick Pipeline stated its strong preference for a 30 metre wide RoW. Brunswick Pipeline would be willing to consider narrowing the RoW during construction for short distances, for example 100 metres, but not in this instance given the significant length along Pipeline Road West. During operation, the purpose of a 30 metre wide RoW is to ensure that any encroachment stays far enough away from a high-pressure transmission line. Brunswick Pipeline submitted that this is an appropriate consideration for this portion of Area 3 given the future residential development plans for the land to the south of Brunswick Pipeline's proposed route. Brunswick Pipeline further noted that the width of the RoW was discussed at some length during the certificate hearing and the 30 metre wide RoW was one of the many measures to ensure the safe operation of a pipeline in an urban environment.

With respect to the north crossing, Brunswick Pipeline submitted that this proposed alternate route was found to:

- have significant conflicts with substantial City of Saint John infrastructure, specifically a water pumping station to the east of Gault Road, a check valve chamber, and several associated valves;
- be closer to the existing residence on the west side of Gault Road;
- extend outside the corridor;
- have a shorter pipeline length;
- cross one additional property;
- parallel an existing utility corridor for a marginally greater length; and
- have no construction interruption of the disposal site access road.

With respect to the south crossing, Brunswick Pipeline submitted that this proposed alternate route was found to:

- have a marginally shorter pipeline length;
- have reduced temporary work room at the Gault Road crossing; and
- have greater construction interruption of the disposal site access road.

Brunswick Pipeline's proposed route attempted to cross Galbraith's disposal site access road at 90 degrees in order to minimize impacts or interruption to the road. Brunswick Pipeline stated that Galbraith's south crossing basically runs longitudinally underneath the portion of this access road immediately adjacent to Gault Road, which would cause greater interruption to the access road during construction. However, given Galbraith's willingness to accept temporary disruptions to the access road during construction and its concerns about losing road frontage on Gault Road for future development, Brunswick Pipeline would be willing to construct a compromise route (Brunswick Pipeline's alternate route). Brunswick Pipeline's alternate route

would incorporate elements of Brunswick Pipeline's proposed route and Galbraith's proposed south crossing without changing the RoW location on the property to the west of Gault Road. Brunswick Pipeline submitted that additional refinements could be made to its alternate route by cutting more of the corner as suggested by Galbraith, but perhaps not as close to the church as what Galbraith is proposing, only because the landowner on the other side of Gault Road is already comfortable with the proposed location of the pipeline.

4.2.5.2 Galbraith

Galbraith submitted that the north crossing would avoid the church, immediately to the south, as well as Galbraith's disposal site access road. The north crossing of Gault Road is the most direct route but would require a long bore to pass under 400 and 750 millimetre water pipeline connections. Galbraith submitted that the presence of City of Saint John infrastructure would make the north crossing a much more technically difficult crossing that would have to be evaluated with respect to cost and feasibility. Galbraith favours the north crossing, and submitted that the shorter distance may well offset the extra costs of the longer bore under Gault Road.

Galbraith submitted that the south crossing would be the next best alternate route and would interfere the least with a realigned entrance from Gault Road onto the disposal site access road. Realignment and reconstruction of the disposal site access road a few metres southward may be required in order to address Galbraith's concerns about losing road frontage on Gault Road for future development. Galbraith stated that it currently has no specific plans for development, but is concerned that the area would be restricted by Brunswick Pipeline's RoW, a hill to the south, and a property to the north. Regardless of any realignment, Galbraith submitted that provisions for access into the disposal site during pipeline installation would be required.

Views of the Board

With respect to Galbraith's request for alternate routes with a permanent RoW width of 20 metres, the Board notes Brunswick Pipeline's concerns about encroachment from future residential development south of Pipeline Road West and from future development next to Gault Road. The Board further notes the following excerpt from the Reasons for Decision for the GH-1-2006 Brunswick Pipeline Project application:

> The Board is of the view that [Brunswick Pipeline] has adequately demonstrated the need for a 30 [metre] wide [RoW] and the additional lands required for aboveground facilities and temporary uses in order to construct and operate the pipeline in a safe and efficient manner.[19]

19 GH-1-2006 Emera Brunswick Pipeline Company Ltd., Facilities and Tolls and Tariffs, Reasons for Decision, May 2007, page 72.

Given the potential for future residential and commercial development in Area 3 and the reliance by Brunswick Pipeline on a 30 metre wide RoW as one of the many measures to ensure the safe operation of a pipeline in an urban environment, the Board is of the view that a 30 metre wide RoW is appropriate for Brunswick Pipeline's proposed route.

With respect to the methods and timing of construction in relation to the disposal site access road, the Board notes Galbraith's concerns and Brunswick Pipeline's commitment to adjust the methods and timing of construction to minimize impacts on the access road. The Board further notes that both Galbraith and Brunswick Pipeline expressed willingness to accommodate each other's interests in order to resolve any concerns on this matter. The Board encourages Brunswick Pipeline and Galbraith to effectively communicate and work together on this matter. The Board is of the view that the methods and timing of construction proposed by Brunswick Pipeline are appropriate in relation to the disposal site access road.

With respect to the north crossing, consistent with the Board's 20 December 2007 Ruling, the Board considered Galbraith's proposed alternate route notwithstanding that it was outside the corridor. The Board notes the existence of City of Saint John infrastructure, including a water pumping station and a check valve chamber to the east of Gault Road, and the technical concerns raised by Brunswick Pipeline in constructing an alternate route in this location. Given the engineering and design considerations that would be required to overcome these technical concerns and the availability of alternate routes that would avoid this infrastructure, the Board is of the view that the north crossing is not the best possible route.

With respect to the south crossing, the Board notes that Brunswick Pipeline's alternate route incorporates elements of Brunswick Pipeline's proposed route and Galbraith's south crossing. The Board further notes the willingness expressed by Brunswick Pipeline during the oral hearing to make additional refinements to its alternate route by cutting more of the corner as suggested by Galbraith, without changing Brunswick Pipeline's proposed route location on the property to the west of Gault Road. In the Board's view, while further evidence would be required to determine what the best route for the pipeline is, a better route appears to be the alternate route proposed by Brunswick Pipeline. The Board is of the view that the interests of both parties can be largely addressed with additional refinements to Brunswick Pipeline's alternate route and encourages Galbraith and Brunswick Pipeline to continue to work together to address Galbraith's concerns as much as practical. Evidence regarding any discussions held should be filed with the PPBoR for such a refined alternate route.

Decision

Based on the evidence before it, the Board finds that the original route proposed by Brunswick Pipeline with respect to Area 3 has not been demonstrated to be the best possible route for the pipeline.

4.3 Galbraith Construction Ltd. Area 4 (PID 00274357)

4.3.1 Background

Galbraith Construction Ltd. (Galbraith) filed a letter of opposition to the proposed Brunswick Pipeline route on PID 00274357 (Area 4) (see Figure 4-3) which was set down for hearing by the Board on 26 November 2007.

The oral hearing for Galbraith was held from 28 to 31 January 2008 in Saint John, New Brunswick. Subsequent to the oral hearing, a process was established to allow for written argument. The hearing for Galbraith concluded on 19 February 2008 with Brunswick Pipeline filing its written Reply Argument on the Galbraith objection.

4.3.2 Brunswick Pipeline's Proposed Route

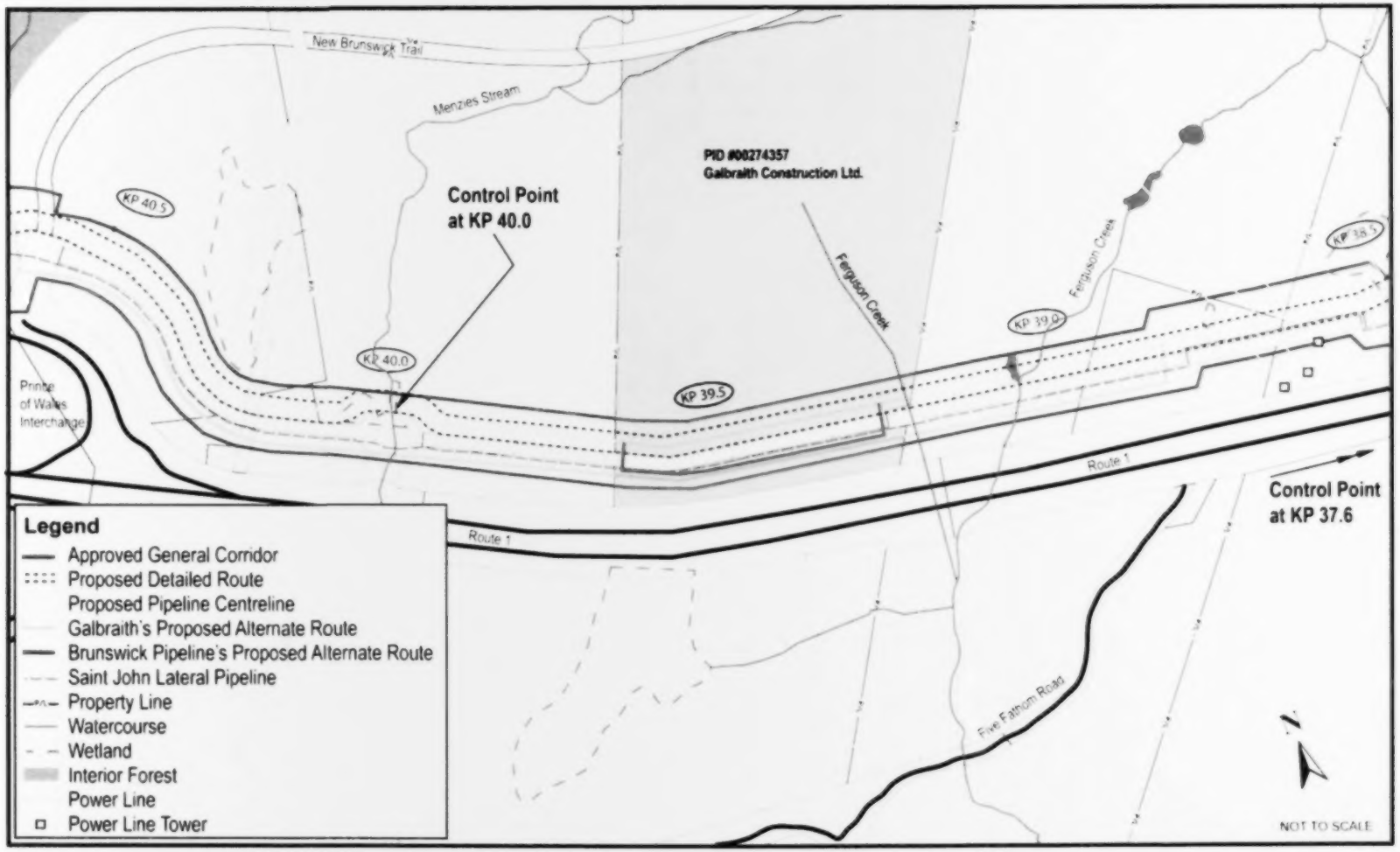
Area 4 is located north of New Brunswick Highway Route 1 (Route 1) and approximately one kilometre east of the Route 1 Prince of Wales Interchange, near Saint John, New Brunswick. Area 4 is located in the rural portion of the Brunswick Pipeline Project, between KP 39.1 and KP 39.6.

Evidence submitted by Brunswick Pipeline indicated that the proposed route was selected based on its primary and secondary routing principles. The primary principle focused on minimizing the length of the pipeline which would in turn minimize the cost of construction and future tolls, as well as the number of affected landowners. The secondary principles included the following:

- adhere to the guidelines associated with the class 1, 2, and 3 constraints identified by Brunswick Pipeline in its application;
- minimize the extent of wet areas crossed;
- minimize the number of properties crossed; and
- parallel existing utility or transportation corridors to reduce environmental impacts and fragmentation of natural habitats and property parcels.

Brunswick Pipeline selected the route through Area 4 by choosing the most direct route with minimal impacts between two control points. The upstream control point is located at KP 37.6, where the proposed route crosses Route 1. This is the preferred road crossing location within the corridor as it minimizes impacts to wetlands. The downstream control point is located at KP 40.0, which is the preferred crossing of Menzies Stream.

Figure 4-3
Galbraith Area 4



Brunswick Pipeline submitted that the routing rationale for Area 4 was to follow the existing New Brunswick Department of Transportation (NBDOT) access road generally paralleling Route 1. This rationale is consistent with Brunswick Pipeline's secondary routing principles. Brunswick Pipeline stated that the principal constraints in the area include: a NBDOT access road; the location of the Saint John Lateral Pipeline; a high voltage transmission line structure; and an existing tree screen along Route 1. Brunswick Pipeline further submitted that east of Area 4, at approximately KP 38.6, a steel power transmission line structure is located within the NB Power RoW crossing. The location of this steel power transmission line structure does not allow for a route along the south side of the NBDOT access road at the NB Power RoW crossing. Locating the proposed pipeline route on the north side of the NBDOT access road also minimizes the number of road crossings. Brunswick Pipeline noted that consideration was also given during route selection to maintaining the existing tree screen for Route 1.

4.3.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.3.3.1 Brunswick Pipeline

Brunswick Pipeline submitted that there would be no access issues for Area 4 once the pipeline is constructed. If Galbraith expressed an interest to create an access road into Area 4 from the NBDOT access road, and if Brunswick Pipeline was notified, it would design the pipeline in a way that would allow for that access. Brunswick Pipeline further submitted that, although knowing this information prior to construction is preferable, it can accommodate those types of access requests after pipeline construction is complete.

Brunswick Pipeline stated that its route was chosen to maintain the tree screen to the extent possible between Route 1 and the lands located to the north of the NBDOT access road. In its view, while Area 4 is intended to be developed for quarrying and may not require a tree screen, adjoining properties may well benefit from retaining the existing tree screen.

4.3.3.2 Galbraith

Galbraith submitted that the portion of Area 4 north of Route 1 is a future quarry and aggregate reserve and that Brunswick Pipeline's proposed route would place restrictions on the access to Area 4 and on the ability to blast for material extraction purposes.

Galbraith indicated that the loss of the aggregate from the future quarry is only part of the loss incurred if Brunswick Pipeline's proposed route is used. The loss of this aggregate would affect the sustainability of Galbraith's business because it is the basis for the type of work it does.

Galbraith submitted that the requirement of maintaining a tree screen between the NBDOT access road and Route 1 is a moot point. Galbraith identified that breaks within the tree screen along Route 1 were noted during a field visit to the site, making adjacent traffic visible in places. If development does occur on the adjacent properties over the long term, the desired tree screen could be established as part of the pipeline RoW restoration.

4.3.4 Galbraith's Proposed Alternate Route

In its letter of opposition to Brunswick Pipeline's proposed route, Galbraith proposed an alternate route. The alternate route would depart Brunswick Pipeline's proposed route at KP 38.8 in a southerly direction, cross the NBDOT access road and Saint John Lateral Pipeline, and then turn almost 90 degrees westward and parallel the NBDOT access road in a 20 metre wide easement. At KP 40.6, the proposed alternate route would turn nearly 90 degrees northward and again cross the NBDOT access road and Saint John Lateral Pipeline and rejoin Brunswick Pipeline's proposed route.

Galbraith submitted that the location of the pipeline to the south of the NBDOT access road would be much less intrusive for it and various other property owners. It suggested that as Route 1 has been upgraded to a four lane highway there would be a sufficiently wide corridor between Route 1 and the NBDOT access road to place the pipeline in that corridor. Galbraith noted that the alternate route would avoid future aggregate quarrying on the north side of the NBDOT access road, utilize the cleared Saint John Lateral Pipeline RoW, and stay within the corridor.

Galbraith contended that in selecting the route in other areas, Brunswick Pipeline has demonstrated that a class 1 constraint, such as a quarry, can be avoided and that the cleared RoW of the Saint John Lateral Pipeline can be paralleled on its south side. Galbraith submitted that its proposed alternate route also avoids clearing 30 metres of additional forested RoW and avoids passing unnecessarily through two wetlands and near two other wetlands.

4.3.5 Views of Parties on Galbraith's Proposed Alternate Route

4.3.5.1 Brunswick Pipeline

Brunswick Pipeline indicated that it was initially informed by Galbraith that it had no objections to the proposed route. Subsequently, Galbraith suggested an alternate route between Route 1 and the NBDOT access road.

Brunswick Pipeline stated that the alternate route would necessitate two additional crossings of both the NBDOT access road and the Saint John Lateral Pipeline. Additionally, Brunswick Pipeline noted that although the alternate route would increase the separation from a future quarry site, it has a greater pipeline length, would cross more properties, and would affect more of the Route 1 tree screen. Brunswick Pipeline further noted that the Galbraith alternate route west of the Prince of Wales Interchange would involve two extremely difficult and intrusive watercourse crossings, one of which contains rock and waterfall features. These features create both environmental and engineering difficulties in constructing a watercourse crossing.

Brunswick Pipeline submitted that the presence of the pipeline would not result in a burdensome constraint to the development of the property as a future quarry any more significantly than the existing proximity to the NBDOT access road and other features such as a watercourse, wetlands, the New Brunswick Trail, and a power transmission line.

Brunswick Pipeline submitted that it had selected the best route for the pipeline through this area. However, in recognition of Galbraith's concerns, Brunswick Pipeline proposed an alternate route

which could satisfy Galbraith's needs by incorporating the Galbraith alternative across Area 4. Brunswick Pipeline's proposed alternate route would depart its proposed route at approximately KP 39.2 (just inside the Galbraith lands) in a southerly direction, cross the NBDOT access road and Saint John Lateral Pipeline, and then turn almost 90 degrees westward and parallel the NBDOT access road. At approximately KP 39.6 (again, just inside the Galbraith lands), Brunswick Pipeline's proposed alternate route would turn nearly 90 degrees northward and again cross the NBDOT access road and Saint John Lateral Pipeline and rejoin Brunswick Pipeline's proposed route. From Brunswick Pipeline's standpoint, its proposed alternate route would be an acceptable route which remains within the corridor and addresses in large measure the concerns raised by Galbraith.

4.3.5.2 Galbraith

Galbraith contended that since all-terrain vehicle traffic negatively affected revegetation along the Saint John Lateral Pipeline in certain wetland areas, Brunswick Pipeline's proposed route across the New Brunswick Trail at the Prince of Wales Interchange could facilitate access to wetlands. Galbraith indicated that it would seem more appropriate to follow a route south of the Saint John Lateral Pipeline adjacent to the readily available NBDOT access road.

Galbraith indicated that the tree screen should be left on the north side of the NBDOT access road as a buffer along Area 4, as it would eventually be developed into a quarry. This would keep the maintenance of the buffer as recommended by the City of Saint John for pits and quarries.

Galbraith acknowledged that Brunswick Pipeline's proposed alternate route would address many of its concerns. Galbraith indicated that if the alternate route proposed by Brunswick Pipeline was extended just beyond the east and west boundaries of its property line, it would be satisfied. This extension would not create any additional road or pipeline crossings and would avoid a creek crossing to the east which would limit Galbraith's access to its property. Galbraith submitted that its original alternate route remains the best route. However, Galbraith noted that if its suggested minor adjustments were adopted, Brunswick Pipeline's proposed alternate route would be an acceptable route.

Views of the Board

The Board acknowledges that there are advantages to both the Brunswick Pipeline proposed route (for example, fewer road and Saint John Lateral Pipeline crossings) and the Galbraith alternate route (for example, minimal loss of accessible aggregate). The Board is of the view that in order to minimize the effect of Brunswick Pipeline's proposed route on Galbraith's business interests, the route should be adjusted to minimize the amount of Area 4 affected.

The Board notes that Brunswick Pipeline is willing to alter its proposed route to reflect a modified version of Galbraith's proposed alternate route. The Board is of the view that the interests of both parties can be largely addressed with Brunswick Pipeline's proposed alternate route. Further,

the Board is satisfied that Brunswick Pipeline's mitigation measures to allow for access over the pipeline would accommodate Galbraith's concerns regarding access to its future quarry operation after the pipeline is constructed.

For these reasons, the Board is of the view that the alternate route proposed by Brunswick Pipeline with respect to Area 4 appears to be a better route than the original route proposed by Brunswick Pipeline.

Decision

Based on the evidence before it, the Board finds that the original route proposed by Brunswick Pipeline with respect to Area 4 has not been demonstrated to be the best possible route for the pipeline.

4.4 Frederick Tuddenham

4.4.1 Background

Mr. Frederick Tuddenham filed a letter of opposition to the proposed Brunswick Pipeline route on PID 01266196 (see Figure 4-4) which was set down for hearing by the Board on 26 November 2007.

The oral hearing for Mr. Tuddenham was held on 29 January 2008 in Saint John, New Brunswick.

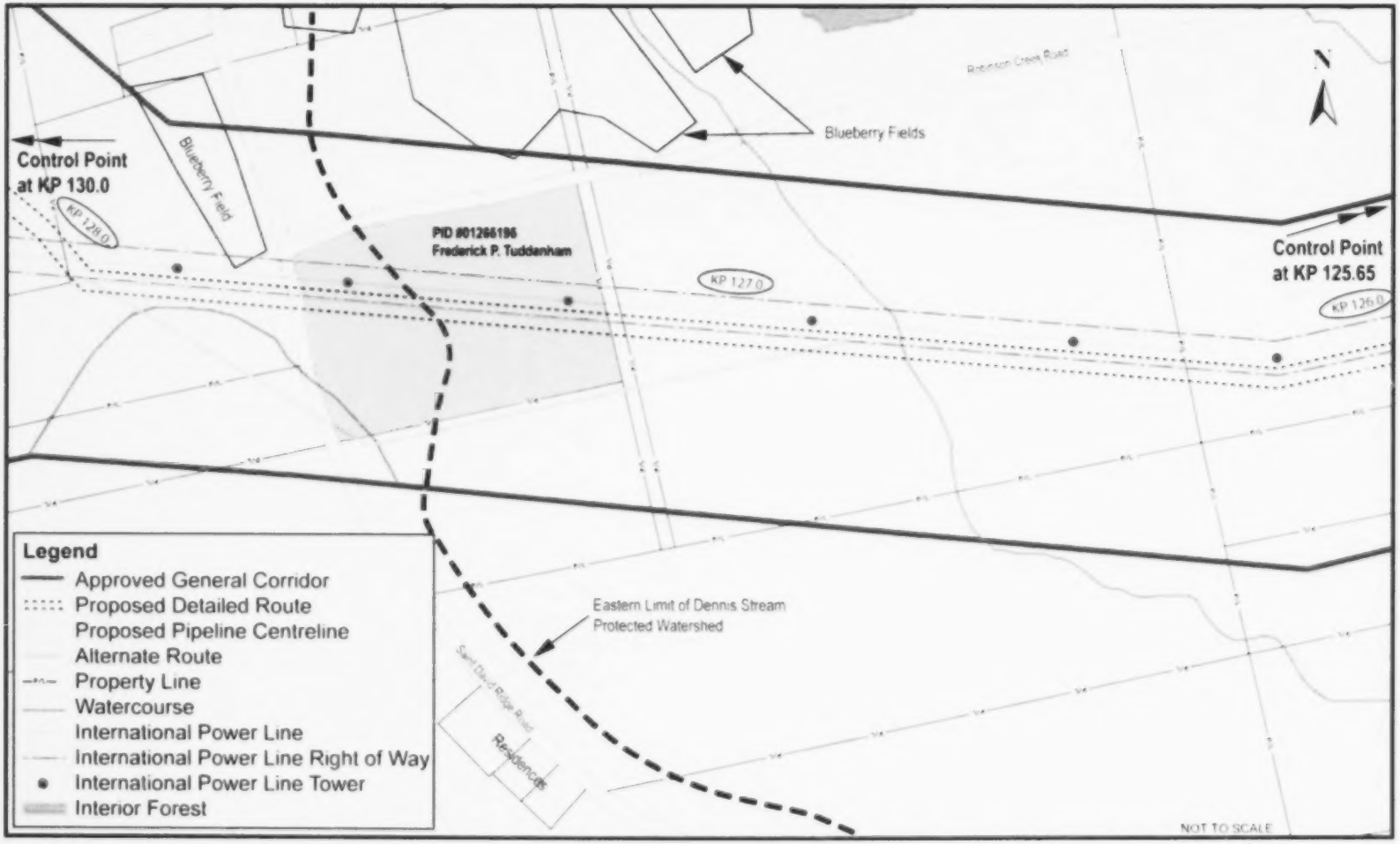
4.4.2 Brunswick Pipeline's Proposed Route

Mr. Tuddenham's property is located directly east of the Saint David Ridge Road and south of Robinson Creek Road. The proposed route would cross Mr. Tuddenham's property (PID 01266196) in an east to west alignment, approximately between KP 127.1 and KP 128.0.

Evidence submitted by Brunswick Pipeline indicated that the proposed route was selected based on its primary and secondary routing principles. The primary principle focused on minimizing the length of the pipeline which would in turn minimize the cost of construction and future tolls, as well as the number of affected landowners. The secondary principles included the following:

- adhere to the guidelines associated with the class 1, 2, and 3 constraints identified by Brunswick Pipeline in its application;
- minimize the extent of wet areas crossed;
- minimize the number of properties crossed; and
- parallel existing utility or transportation corridors to reduce environmental impacts and fragmentation of natural habitats and property parcels.

Figure 4-4
Frederick Tuddenham



Brunswick Pipeline submitted that the routing principles were applied during the selection of the proposed route through Mr. Tuddenham's property in order to connect two control points located outside of his property. The upstream control point from Mr. Tuddenham's property is located at KP 125.65, which is the preferred crossing of Gallop Stream. The downstream control point is located at KP 130.0, which is the preferred crossing of Dennis Stream, Route 750, and the Canadian Pacific Railway. Brunswick Pipeline stated that these crossings occur in very limited space, which made it difficult to identify a good crossing location. Brunswick Pipeline submitted that the preferred crossing at this control point reduces the potential adverse environmental effects to Dennis Stream, which is the municipal drinking water supply for the Town of St. Stephen. In addition, Dennis Stream contains sensitive Atlantic salmon spawning and rearing habitat.

4.4.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.4.3.1 Brunswick Pipeline

Brunswick Pipeline indicated that the proposed route through Mr. Tuddenham's property was chosen in order to maximize the paralleling of existing utility corridors while maintaining minimum setbacks from the NB Power IPL. The paralleling and overlapping of the NB Power IPL transecting Mr. Tuddenham's property reflect Brunswick Pipeline's secondary routing principles. Brunswick Pipeline submitted that the paralleling of existing corridors minimizes fragmentation of natural habitats and property parcels.

Brunswick Pipeline further submitted that the proposed route limits the number of property parcels affected and minimizes the amount of disturbance within the Dennis Stream Protected Watershed that could be caused by such activities as clearing and watercourse crossings.

In response to concerns raised by Mr. Tuddenham at the hearing regarding the burning of blueberry plants for pruning purposes, Brunswick Pipeline indicated that this would be a permitted activity on its proposed RoW. The landowner would be required to submit a burning plan to Brunswick Pipeline prior to the planned burning activity and Brunswick Pipeline would supervise the activity on the RoW.

Brunswick Pipeline stated that in order to address unauthorized access concerns, in areas where the proposed route overlaps with the NB Power IPL RoW, and where a landowner has requested that a fence be erected across both RoWs, Brunswick Pipeline will install one fence across both RoWs.

4.4.3.2 Mr. Tuddenham

In Mr. Tuddenham's letter of opposition, he stated that the proposed route would cause the loss of his current and future blueberry fields. He also indicated concerns regarding unauthorized access to his property based on his experience with the recent construction of the NB Power IPL through his property.

At the hearing, Mr. Tuddenham raised questions regarding the lack of consultation from Brunswick Pipeline regarding access to his property. Mr. Tuddenham also commented that

Brunswick Pipeline was informed of his intentions to cultivate blueberries on his lands adjacent to the NB Power IPL RoW.

Mr. Tuddenham indicated that the location of the proposed route through his property would destroy the potential to cultivate blueberries. Mr. Tuddenham submitted that blueberry plant habitat would be destroyed as a result of land preparation activities such as topsoil, stump, and rock removal, as well as trenching. The construction of the pipeline could alter the soil conditions, making it unfavourable for the growth of blueberries. Also, Mr. Tuddenham noted that re-vegetation of the pipeline RoW with grass during restoration would create a fire hazard during the blueberry pruning process, since this involves controlled burning of the blueberry plants.

4.4.4 Mr. Tuddenham's Proposed Alternate Route

Mr. Tuddenham proposed an alternate route that departs Brunswick Pipeline's proposed route in a southwest direction at approximately KP 126.9, parallels the southern boundary of Mr. Tuddenham's property to Saint David Ridge Road, and then continues in a northwest direction to approximately KP 128.0, where it rejoins the proposed route. The location of this proposed alternate route is entirely within the corridor boundaries.

4.4.5 Views of Parties on Mr. Tuddenham's Proposed Alternate Route

4.4.5.1 Brunswick Pipeline

Brunswick Pipeline indicated that the alternate route is not the best route as it is approximately 79 metres longer than its proposed route. Brunswick Pipeline also submitted that the alternate route:

- crosses a watercourse within the Dennis Stream Protected Watershed twice;
- requires twice as much clearing within the Dennis Stream Protected Watershed;
- crosses additional property parcels and transects a property corner;
- neither parallels nor overlaps an existing utility corridor; and
- crosses the Saint David Ridge Road at less than a 70 degree angle.

4.4.5.2 Mr. Tuddenham

Mr. Tuddenham indicated that this alternate route would avoid his blueberry land and the natural blueberry plant growth occurring along the NB Power IPL. The proposed alternate route would cross lands that are not in use for blueberry production.

Views of the Board

Mr. Tuddenham's main concern is that the presence of the pipeline and restored RoW on his property would cause the loss of his current and future blueberry lands both on and off RoW due to habitat destruction and

the inability to use burning as a pruning method. The Board notes that, based on the testimony provided by Mr. Tuddenham, the blueberries growing along the NB Power IPL are not currently in commercial production and would take approximately another 15 years to reach that stage. While Mr. Tuddenham had concerns about whether the pruning method of burning the blueberry plants would be an acceptable activity over the pipeline RoW, the Board is satisfied with Brunswick Pipeline's statement that this would be a permitted activity, as long as prior notice is given to Brunswick Pipeline so that it can monitor the burning activity to maintain pipeline safety.

The Board is of the view that Mr. Tuddenham's proposed alternate route has the greater potential for adverse environmental impacts to the Dennis Stream Protected Watershed, which is a potable water supply for the Town of St. Stephen. The proposed alternate route would require twice as much clearing within the protected watershed and it would involve two crossings of a watercourse that drains into Dennis Stream. The Board notes that Brunswick Pipeline's proposed route is designed to minimize the amount of disturbance within this protected watershed.

The Board recognizes the unauthorized access concerns raised by Mr. Tuddenham and the potential damage that can be caused to blueberry plants by all-terrain vehicles and snowmobiles. The Board is of the view that the proposed access control fencing and gating, which Brunswick Pipeline has committed to erect across both its pipeline RoW and the NB Power IPL RoW, would help to alleviate the unauthorized access concerns. The Board directs Brunswick Pipeline to discuss the timing of the construction of the fence with Mr. Tuddenham prior to or shortly after clearing commences, and to keep him informed of the schedule for construction of the fence.

Decision

The Board finds that the route proposed by Brunswick Pipeline represents an appropriate balance of all relevant factors and therefore is the best possible route. Further, the Board is satisfied with the methods and timing of construction proposed by Brunswick Pipeline.

4.5 Beatrice Latour and Marc Latour

4.5.1 Background

Mr. Melvin Hannan and Ms. Beatrice Latour filed a letter of opposition to the proposed Brunswick Pipeline route where it passes near or adjacent to PIDs 00414201, 00319053, 00319079, and 00413856 (collectively referred to as the Latour properties) (see Figure 4-5), and in relation to a RoW registered in the County of Saint John land titles office. The letter of opposition was set down for hearing by the Board on 26 November 2007.

The oral hearing for Mr. Hannan and Ms. Latour was held on 30 January 2007 in Saint John, New Brunswick.

4.5.2 Brunswick Pipeline's Proposed Route

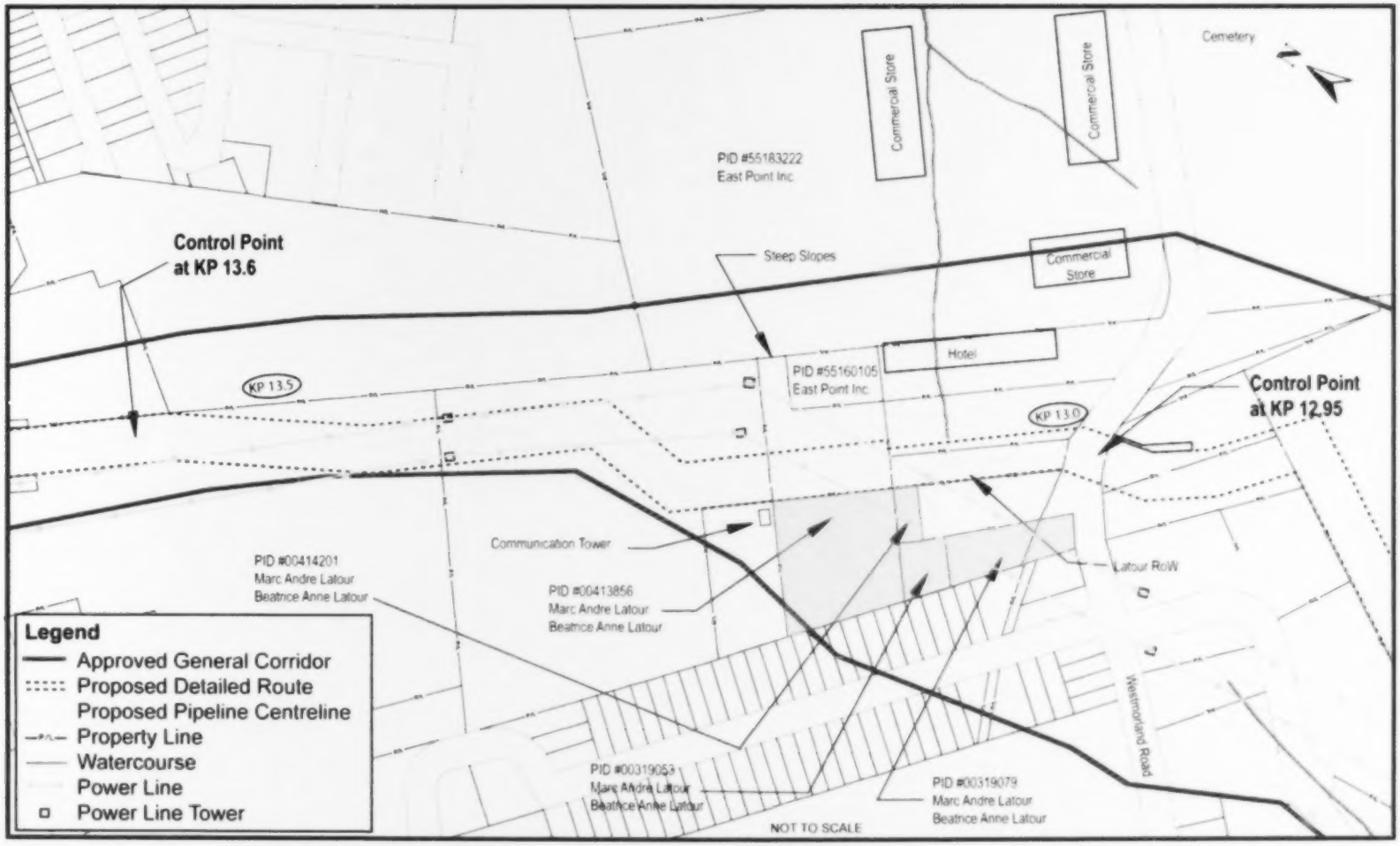
The Latour properties are located contiguous to each other in an area directly west of and adjacent to Westmorland Road where it is crossed by the proposed route at KP 12.95, in Saint John, New Brunswick. The proposed route passes by the Latour properties in a southeast to northwest alignment from KP 12.95 to approximately KP 13.2.

Evidence submitted by Brunswick Pipeline indicated that the proposed route was selected based on its primary and secondary routing principles. The primary principle focused on minimizing the length of the pipeline which would in turn minimize the cost of construction and future tolls, as well as the number of affected landowners. The secondary principles included the following:

- adhere to the guidelines associated with the class 1, 2, and 3 constraints identified by Brunswick Pipeline in its application;
- minimize the extent of wet areas crossed;
- minimize the number of properties crossed; and
- parallel existing utility or transportation corridors to reduce environmental impacts and fragmentation of natural habitats and property parcels.

Brunswick Pipeline submitted that the routing principles were applied to the selection of the proposed route where it passes by the Latour properties. These principles enabled Brunswick Pipeline to generally follow the existing power line corridor between two established control points and to minimize the number of properties intersected by the pipeline RoW as much as practical. The established control points are the crossing of Westmorland Road at KP 12.95 and the southeast approach to the crossing of Rothesay Avenue at KP 13.6. As a result of Brunswick Pipeline's route selection approach, none of the Latour properties are crossed by the proposed route. Brunswick Pipeline also noted that the proposed route avoids residential properties in the area, thus complying with a defined RoW selection consideration of avoiding buildings and residences. The routing also avoids a cemetery and also complies with NB Power's crossing requirements for its power line RoW.

Figure 4-5
Latour



4.5.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.5.3.1 Brunswick Pipeline

Brunswick Pipeline noted Mr. Hannan and Ms. Latour's concerns with respect to restoring access and drainage along the existing lane way to the north of Westmorland Road and stated that it is committed to restoring the lane way to the satisfaction of the property owners. Brunswick Pipeline also noted that Mr. Hannan and Ms. Latour identified the crossing of various infrastructure as an issue of concern. Brunswick Pipeline noted that it has worked cooperatively with the owners of this infrastructure (the City of Saint John and NB Power) and has reached agreement on the proposed construction methods and timing.

Brunswick Pipeline presented evidence in response to the issues raised in Mr. Hannan and Ms. Latour's letter of opposition indicating that:

- temporary access to the barns and gardens would be maintained during construction;
- drainage would be maintained across a nearby swampy area during and after construction activities; and
- it has reached an agreement with the City of Saint John and NB Power on the proposed crossing methods and timing of construction.

4.5.3.2 Mr. Hannan and Ms. Latour

Mr. Hannan and Ms. Latour did not appear at the hearing. No alternate route was proposed in their letter of opposition; however they raised the following issues:

- lack of notification;
- lowered property value and loss of buyer interest causing a delay in sale closing;
- proximity to the pipeline and concerns about the potential for disaster associated with aging municipal infrastructure;
- many city streets, water mains, pipelines, power lines, and residential and commercial buildings all intersecting at the proposed pipeline location;
- construction would temporarily prevent access to their barn and gardens; and
- drainage concerns regarding a nearby swampy area.

Views of the Board

The Board is of the view that the issues raised by Mr. Hannan and Ms. Latour were satisfactorily addressed in the hearing and that there was no evidence to indicate that a better route exists near the Latour properties. The Board notes that the evidence and commitments submitted by Brunswick Pipeline appropriately addressed Mr. Hannan and Ms. Latour's concerns with respect to methods and timing of construction. With regard to Mr. Hannan and Ms. Latour's concern with existing infrastructure in the

area such as water mains and power transmission lines, the Board recognizes that Brunswick Pipeline has reached an agreement with both the City of Saint John and NB Power on the proposed crossing methods and timing of construction. The Board also notes that Brunswick Pipeline has committed to restoring the RoW to the satisfaction of the landowners.

Decision

The Board finds that the route proposed by Brunswick Pipeline represents an appropriate balance of all relevant factors and therefore is the best possible route. Further, the Board is satisfied with the methods and timing of construction proposed by Brunswick Pipeline.

4.6 Sierra Supplies Ltd.

4.6.1 Background

Sierra Supplies Ltd. (Sierra) filed a letter of opposition to the proposed Brunswick Pipeline route on PID 55172050 (see Figure 4-6) which was set down for hearing by the Board on 26 November 2007.

The oral hearing for Sierra was held on 31 January 2007 in Saint John, New Brunswick.

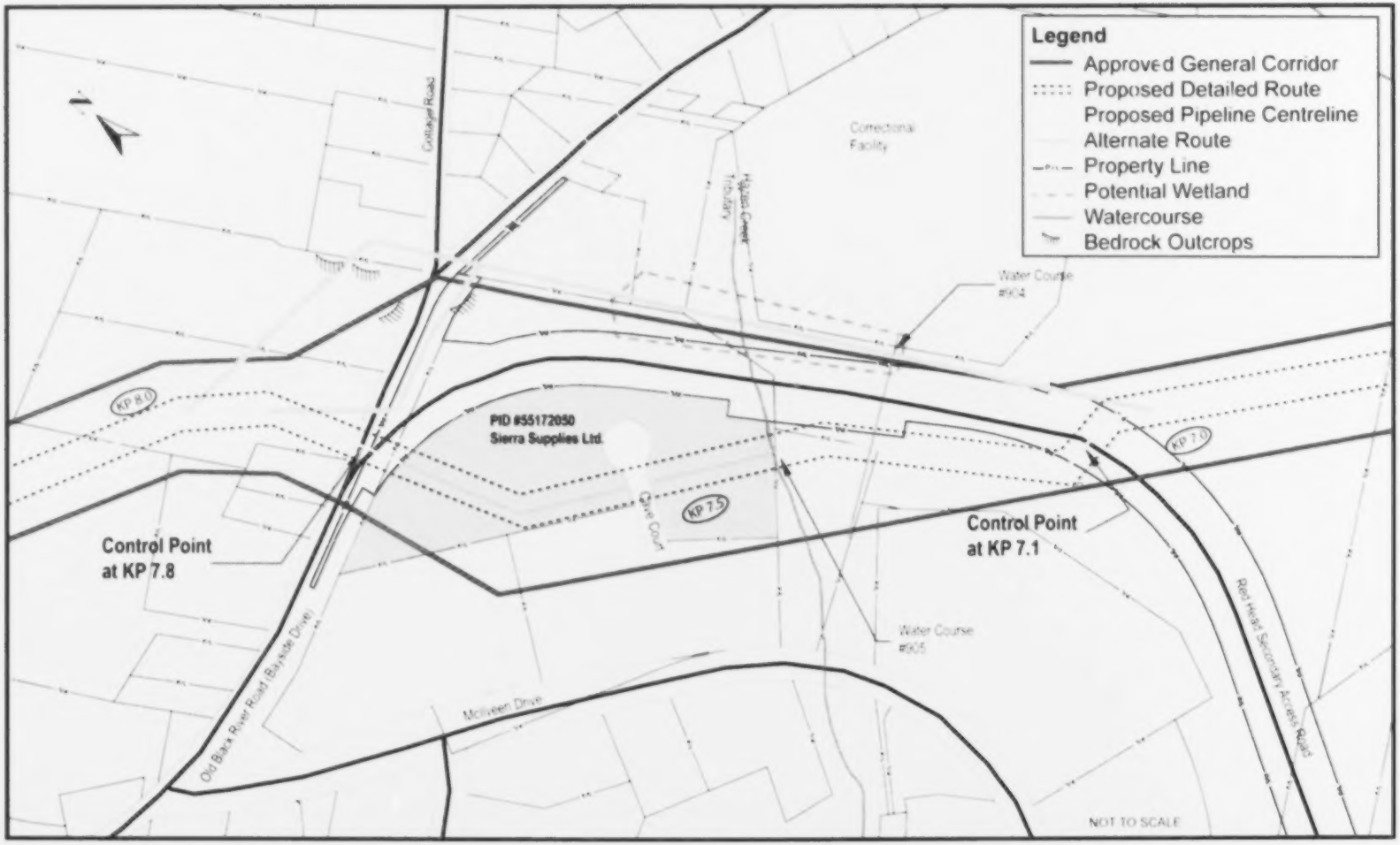
4.6.2 Brunswick Pipeline's Proposed Route

Sierra's property is located in the Saint John Industrial Park in Saint John, New Brunswick. The proposed route would cross Sierra's property (PID 55172050) in an east to west alignment, approximately between KP 7.4 and KP 7.8.

Evidence submitted by Brunswick Pipeline indicated that the proposed route was selected based on its primary and secondary routing principles. The primary principle focused on minimizing the length of the pipeline which would in turn minimize the cost of construction and future tolls, as well as the number of affected landowners. The secondary principles included the following:

- adhere to the guidelines associated with the class 1, 2, and 3 constraints identified by Brunswick Pipeline in its application;
- minimize the extent of wet areas crossed;
- minimize the number of properties crossed; and
- parallel existing utility or transportation corridors to reduce environmental impacts and fragmentation of natural habitats and property parcels.

Figure 4-6
Sierra



Brunswick Pipeline submitted that the routing rationale in this area was to connect two relatively close control points by abutting existing property boundaries as much as practical in order to minimize land impacts. Brunswick Pipeline further submitted that the principal constraints in the area are residences and commercial buildings, the Red Head Secondary Access Road, and watercourses. The upstream control point from the Sierra property occurs at KP 7.1 at the Red Head Secondary Access Road crossing, which allows for a perpendicular crossing of the Red Head Secondary Access Road while remaining within the corridor. The downstream control point from the Sierra property occurs at KP 7.8 at the Bayside Drive (formerly Old Black River Road) crossing, which allows for a perpendicular road crossing and avoids existing buildings on the north side of Bayside Drive. These buildings include a residence directly south of and a business directly north of the pipeline route, to the west of Bayside Drive.

4.6.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.6.3.1 Brunswick Pipeline

Brunswick Pipeline submitted that the routing in this area is consistent with avoiding buildings and residences, thus complying with the defined RoW selection consideration of avoiding an already developed area if there are vacant undeveloped areas available. Brunswick Pipeline stated that when passing through an already developed area, a pipeline is put into a location that was developed without the thought of a pipeline in mind; whereas, if a pipeline is put into undeveloped vacant land, then development can continue in the future knowing that a pipeline is there and the development plans would therefore be in harmony with the pipeline.

Brunswick Pipeline submitted that the presence of a pipeline does not preclude any future subdivision development and the loss of use of any portion of land can be addressed through compensation. Brunswick Pipeline also stated that it was aware of Sierra's plans for a subdivision development and that Brunswick Pipeline is willing to work with Sierra to minimize the impact of the pipeline. Brunswick Pipeline further submitted that the main restriction with the proposed easement for the 30 metre RoW is the ability to construct permanent structures. There are restrictions for certain activities on the easement, for example, excavation, storage, or burning, but these may be permitted with approval from Brunswick Pipeline, and in some instances, approval from the Board. Brunswick Pipeline stated in its Letter of Commitments that, at the landowner's request, Brunswick Pipeline will install a minimum of one permanent heavy vehicle crossing for permanent access roads for each parcel of land, if required.

The routing avoids parallel occupation within the limits of the recently constructed Red Head Secondary Access Road. Brunswick Pipeline submitted that this is important because:

- the road authorities expect road crossings to be as close to 90 degrees as practical for operational issues, for example, the City of Saint John considers roadways as locations for other utilities like water and sewer and services, and the presence of the pipeline in a roadway would present an obstacle for these other utilities;
- a failure to cross at 90 degrees causes other construction impacts, for example, lengthening road bores; and
- there are safety concerns for highway workers by not following industry practices.

The routing crosses the two watercourses in the area as close to perpendicular as practical, thereby minimizing impacts to wet areas, which is a secondary routing criterion. The routing also aligns with Sierra's property line that is just west of Cave Court, in an attempt to minimize land use impacts.

4.6.3.2 Sierra

Sierra stated that its vision for industrial development has been based on the needs of the general public and not on the accommodation of a pipeline. Sierra submitted that the proposed route is not the best route for Sierra or for the City of Saint John because of the people of Saint John that could be served in the future by businesses located on Sierra's property. Sierra further submitted that it not would be doing Saint John justice to use premium, fully developed, industrial park land for the pipeline, especially when there is a real viable option.

Counsel for Sierra submitted that the proposed route would restrict activities on Sierra's property, for example, the use of heavy equipment and the storage of flammable materials and chemicals, which would be a great hindrance upon anyone looking to build in this area.

Sierra submitted that the property was purchased as an investment with the intention to sell it in the future to industrial users at a profit and that it has invested substantial funds into the development of the property in order to excavate and prepare the property for its subdivision into industrial lots. The entire subdivision would be either directly affected, by the pipeline running through the lots, or indirectly affected, by the pipeline crossing the access road to the subdivision. Sierra submitted that the proposed route completely devalues its property, unreasonably interferes with its right to use and enjoy the property, and renders the property completely useless because the remaining portions of the property would be too small to be marketable to most industrial users.

4.6.4 Sierra's Proposed Alternate Route

Counsel for Sierra submitted that this is not simply a matter of an inconvenienced landowner and does not relate solely to a compensable loss, but rather the destruction of an entire industrial park. Sierra requested that the pipeline either not be constructed on its property or, by following the proposed alternate route, that only the most northeastern portion of its land located north of the Red Head Secondary Access Road be impacted.

Sierra submitted that it had temporary development plans drawn up for the whole property; however, these plans have not been registered with the City of Saint John because it is possible that the plans will have to change in order to accommodate customer requirements.

In its evidence, Sierra requested an alternate route that follows the Red Head Secondary Access Road on its northeast side in order to connect the control point at KP 7.1 to the control point at KP 7.8. Sierra originally submitted two alternatives to cross Bayside Drive. During the hearing, Sierra indicated that it was only proposing the southern route, which was labeled Alternate Number 2 in Brunswick Pipeline's evidence and on the maps submitted. The alternate route proposed would avoid passing through the middle of Sierra's property, and would cross Bayside Drive slightly further to the east of Brunswick Pipeline's proposed route.

4.6.5 Views of Parties on Sierra's Proposed Alternate Route

4.6.5.1 Brunswick Pipeline

Brunswick Pipeline submitted that it was not until October 2007 that the idea of a route on the north side of the Red Head Secondary Access Road came up. For any alternate route outside the corridor, Brunswick Pipeline stated it would pursue the alternate route only if it appeared to be a superior route and it would be possible to get support from all affected landowners. Brunswick Pipeline submitted that Sierra's alternate route did not appear to be a superior route because it had more land use conflicts with other landowners, in that the alternate route moves the pipeline from vacant lands onto other vacant lands with development potential as well as other lands that are already developed.

Brunswick Pipeline submitted that there would be land use impacts where the alternate route is proposed to cross Bayside Drive. Given the recent road realignment, Bayside Drive is more like an S-bend, and as a result there would be a parallel occupation within the roadway for part of this proposed alternate route, which is not preferred by road owners such as the City of Saint John.

Brunswick Pipeline submitted that there is not enough room to remain within the corridor and follow the northern edge of the Red Head Secondary Access Road. In order to stay within this corridor, especially closer to the correctional facility property, Brunswick Pipeline stated that the pipeline would have to be placed in the shoulder of that road, which is possible, but is an option of last resort. Brunswick Pipeline further submitted that having the pipeline located in the shoulder of a road, when vacant land is available, violates all routing principles.

The alternate route encounters bedrock outcrops. Brunswick Pipeline submitted that the presence of bedrock outcrops is a construction issue, in that it is it is more costly to remove the rock, and it increases the potential for encountering acid-generating rock. Brunswick Pipeline stated that it did not see any bedrock outcrops along its proposed route.

The alternate route would longitudinally traverse a potential wetland at approximately KP 7.4, which is avoided by Brunswick Pipeline's proposed route. The preliminary environmental review for the general route corridor did not identify any wetlands or potential wetlands at this location, but field visits during January 2008 revealed two of the three criteria generally used to confirm the existence of a wetland, specifically the presence of groundwater and the presence of cedar trees. The third criterion, the presence of hydric soils, which could have classified the area as a confirmed wetland, could not be tested at the time of the field visit because of winter conditions and the associated challenges of doing any digging.

4.6.5.2 Sierra

Sierra submitted that this alternate route was presented to Brunswick Pipeline as early as the summer of 2006, but Brunswick Pipeline would not consider options outside the corridor. Sierra further submitted that the alternate route would have less impact on existing and future infrastructure in the area, including two fewer road crossings, and that the majority of land that would be affected belongs to the Province of New Brunswick and is currently unoccupied and undeveloped.

Views of the Board

Consistent with the Board's 20 December 2007 Ruling, the Board considered Sierra's proposed alternate route notwithstanding that it was outside the corridor. Having considered Brunswick Pipeline's proposed route and Sierra's proposed alternate route, the Board is of the view that Brunswick Pipeline's proposed route has advantages when compared to Sierra's proposed alternate route. These advantages include avoidance of an already developed area in favour of vacant undeveloped areas, avoidance of a potential wetland, no apparent bedrock outcrops, and avoidance of parallel installation within roads. The Board also finds that Brunswick Pipeline's proposed route has disadvantages when compared to Sierra's proposed alternate route, for example, two additional road crossings and the crossing of a property that has been extensively excavated in preparation for its subdivision into industrial lots.

In this situation, a key component in the consideration of the best possible route is the impacts on land use. The evidence indicates that Sierra's proposed alternate route would move the pipeline from vacant lands (at various stages of development) onto other vacant lands (at various stages of development), and more significantly, onto lands that are already developed. The evidence further indicates that Sierra's proposed alternate route would require longitudinal construction and a parallel occupation within Bayside Drive. The Board notes that subdivisions still in the planning stage can be designed to take into account pipelines, and that this same opportunity is not available for existing subdivisions. The Board notes that pipeline companies can construct permanent crossings for heavy equipment; the Board expects Brunswick Pipeline would work with Sierra to determine if and where such a crossing may be necessary.

The Board has considered Sierra's statement that the driving factor for its vision of the subdivision development has not been the accommodation of the pipeline. The Board has also considered Brunswick Pipeline's submissions of its willingness to work with Sierra to facilitate future development. Should matters of compensation remain outstanding, the Board notes that the NEB Act sets out an arbitration process to address such issues.

Decision

The Board finds that the route proposed by Brunswick Pipeline represents an appropriate balance of all relevant factors and therefore is the best possible route. Further, the Board is satisfied with the methods and timing of construction proposed by Brunswick Pipeline.

4.7 Estate of A.J. Debly

4.7.1 Background

Ms. Teresa Debly, on behalf of the Estate of A.J. Debly (Debly), filed a letter of opposition to the proposed Brunswick Pipeline route on PID 00417097 (see Figure 4-7) which was set down for hearing by the Board on 26 November 2007.

The oral hearing for Ms. Debly was held on 31 January 2007 in Saint John, New Brunswick.

4.7.2 Brunswick Pipeline's Proposed Route

The Debly property is located west of Proud Road and abuts the west edge of Calvert Lake, near the southeastern outskirts of the City of Saint John. The proposed route would cross the Debly property (PID 00417097) in a south to north alignment, approximately between KP 4.9 and KP 5.3.

Evidence submitted by Brunswick Pipeline indicated that the proposed route was selected based on its primary and secondary routing principles. The primary principle focused on minimizing the length of the pipeline which would in turn minimize the cost of construction and future tolls, as well as the number of affected landowners. The secondary principles included the following:

- adhere to the guidelines associated with the class 1, 2, and 3 constraints identified by Brunswick Pipeline in its application;
- minimize the extent of wet areas crossed;
- minimize the number of properties crossed; and
- parallel existing utility or transportation corridors to reduce environmental impacts and fragmentation of natural habitats and property parcels.

Brunswick Pipeline submitted that the routing principles were applied to the selection of the proposed route through the Debly property. These principles enabled Brunswick Pipeline to minimize impacts to and from the crossings of Bean Brook, Beyea Brook and associated tributaries, interior forests, and the local topography and side slopes while connecting two control points located outside of the Debly property. The upstream control point from the Debly property is located at KP 4.4, which is the preferred crossing of Bean Brook. The downstream control point is located at KP 7.1, which allows for a perpendicular crossing of the Red Head Secondary Access Road while remaining within the corridor.

In addition to the primary and secondary routing principles, Brunswick Pipeline applied other selection criteria for the proposed route through the Debly property. Specifically, Brunswick Pipeline chose a route that minimizes the amount of interior forest habitat traversed.

Figure 4-7
Debly

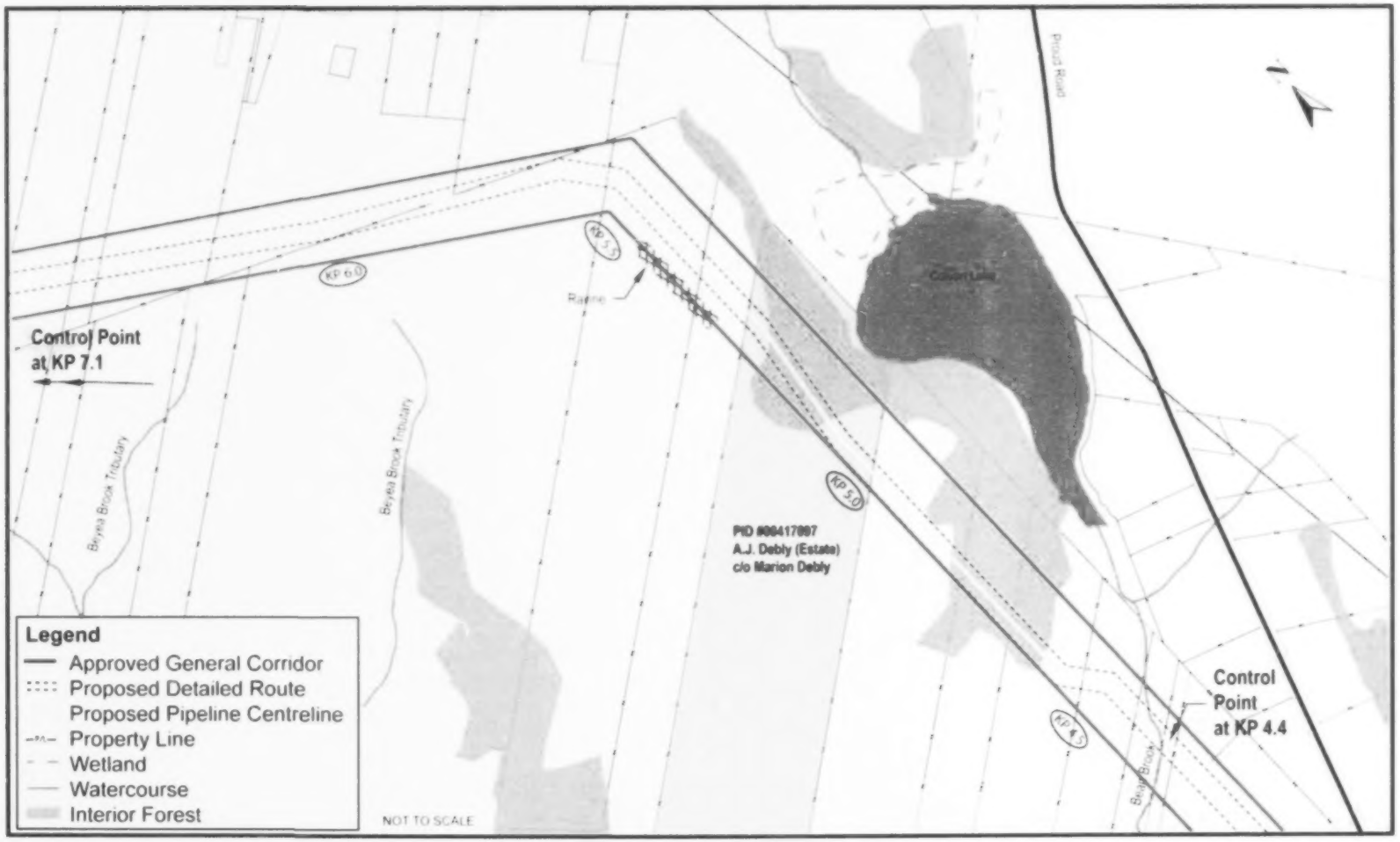
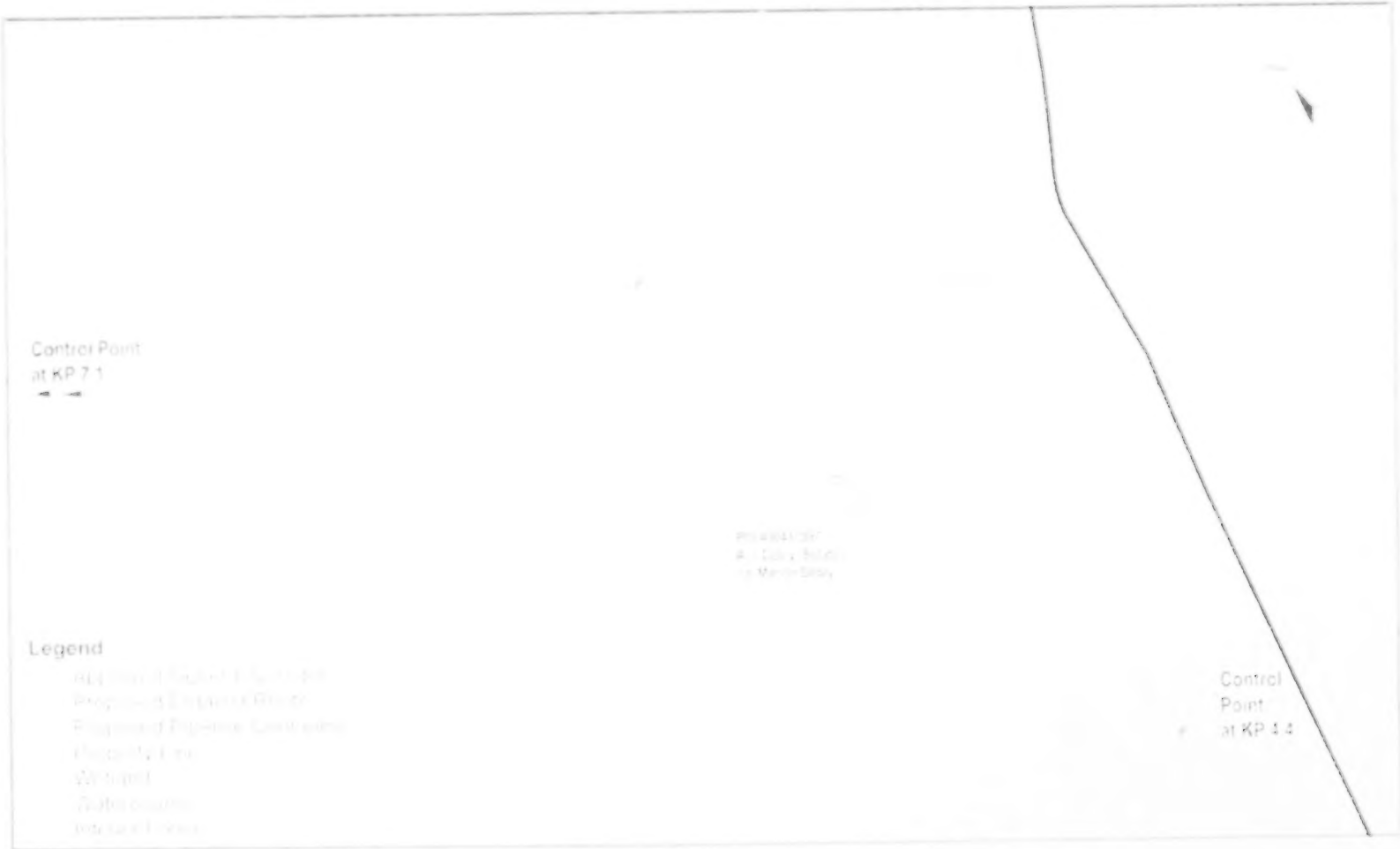


Figure 4-7
Debly



4.7.3 Views of Parties on Brunswick Pipeline's Proposed Route

4.7.3.1 Brunswick Pipeline

Brunswick Pipeline indicated that the proposed route through the Debly property minimizes impacts to areas identified as interior forest, crosses two watercourses (Beyea Brook and Bean Brook) located to the east and west of the Debly property at preferred locations, and avoids a ravine found west of the Debly property near KP 5.4 to KP 5.5. Brunswick Pipeline further stated that the proposed route is located as far as practical from Calvert Lake in order to minimize any impacts to future recreational use.

Brunswick Pipeline stated that its intentions are to construct the pipeline using heavy wall pipe (pipe with a slightly thicker wall) from KP 0.0 to KP 30.0, which would allow for permanent road crossings at various points on these properties. Brunswick Pipeline also stated that it has plans for only one pipeline in its proposed RoW but noted that it is physically possible for additional pipelines to be constructed within it. In order for that to occur, Brunswick Pipeline noted that the company proposing such work would have to apply to the appropriate regulatory authority for approval and seek agreement of the landowner.

Brunswick Pipeline indicated that the proposed depth of cover of 0.9 metres, to be used across the Debly property, is greater than the requirements in the design codes adopted by the Board. Brunswick Pipeline indicated that a depth of cover greater than 0.9 metres may be used where it has been previously indicated by a landowner that they would require a crossing over the pipeline, in addition to the use of heavy wall pipe. Brunswick Pipeline submitted that when the pipeline is placed at greater depths, additional sand padding and backfill material are required and must be transported to the site. Brunswick Pipeline further submitted that in areas of rock, greater depths require additional rock removal, storage, and disposal, which can increase overall costs to the project.

4.7.3.2 Ms. Debly

In Ms. Debly's letter of opposition, no alternate route was proposed, however Ms. Debly raised the following issues:

- fragmentation of the activities of the Brunswick Pipeline Project and the conduct of any clearing prior to the finalization of the entire proposed route;
- limitation of development near the property line at Calvert Lake;
- loss of woodlot options for the lifetime of the pipeline;
- limitations regarding the planned recreational use of land (specifically construction of a winterized cabin);
- proposed 0.9 metre depth of the pipeline; and
- value of the land required for the pipeline.

At the hearing Ms. Debly raised questions regarding, among other things:

- the definition of interior forests;
- the conduct of a timber cruise on the proposed RoW within the Debly property to identify the tree species;
- the placement of pipe within the RoW;
- permitted and non-permitted activities within the RoW;
- proposed pipeline construction practices such as welding, cover depth, bends, abandonment, and timing;
- access across the pipeline to other areas of the Debly property for various purposes, including silviculture operations;
- the possibility of additional pipelines constructed within the Brunswick Pipeline RoW;
- other utility corridors existing on the Debly property;
- life expectancy of the pipeline; and
- abandonment at the end of the life of the pipeline.

Views of the Board

The Board is of the view that the issues raised by Ms. Debly were satisfactorily addressed in the hearing and that there was no evidence to indicate that a better route exists through the Debly property. The Board notes that Brunswick Pipeline recognized the potential for recreational use and development along Calvert Lake and therefore attempted to maintain the maximum distance from Calvert Lake allowable within the confines of the corridor.

The Board notes that Brunswick Pipeline stated that it would provide compensation for the loss of woodlot options from within the proposed pipeline RoW. As Brunswick Pipeline will make provisions for crossing locations for woodlot operators, the Board is of the view that there would be no significant effects on the opportunity for the landowner to maintain woodlot options for the remaining area of the Debly property.

The Board further recognizes that while Brunswick Pipeline offered to provide a heavy vehicle crossing of the pipeline RoW for every landowner, the entire pipeline proposed across the Debly property would have heavy wall pipe and therefore the presence of the pipeline would not be a hindrance for the development of permanent roads across the RoW for passenger vehicle activity. In addition, Brunswick Pipeline committed to construct the pipeline in such a manner to accommodate heavier vehicles if a location was identified prior to construction, such as by lowering the pipeline, otherwise other techniques such as placement of a

small bridge over the pipeline would be used if crossings were identified following construction.

The Board is satisfied that the proposed depth of cover of 0.9 metres, to be used across the Debly property, is appropriate and is deeper than the requirements in the standard engineering codes adopted by the Board. The Board notes that Brunswick Pipeline indicated that, in addition to the use of heavy wall pipe, a depth of cover greater than 0.9 metres may be used where it has been previously indicated by a landowner that they would require a crossing over the pipeline.

Decision

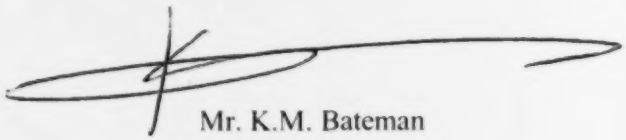
The Board finds that the route proposed by Brunswick Pipeline represents an appropriate balance of all relevant factors and therefore is the best possible route. Further, the Board is satisfied with the methods and timing of construction proposed by Brunswick Pipeline.

Chapter 5

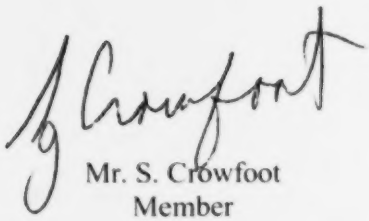
Disposition

The foregoing chapters constitute our Decisions and Reasons for Decision in the Board's MH-3-2007 detailed route hearing.

The Board values the efforts and involvement of all those who participated in this hearing. The Board recognizes that hearings such as this raise matters that are sensitive and important to people and also recognizes the challenges posed in preparing for and attending the hearing. Therefore, the Board appreciates the respect shown by participants at this proceeding, the extent of the preparations made by people leading up to and during their participation at the hearing, and the quality of the submissions that were made. Evidence and comments at the oral hearing were very helpful to the Board in making its decisions.



Mr. K.M. Bateman
Presiding Member



Mr. S. Crowfoot
Member

Mr. D. Hamilton
Member

Calgary, Alberta
May 2008

Appendix I

National Energy Board Act
R.S.C. 1985, c. N-7

33. (1) When the Board has issued a certificate, the company shall prepare and submit to the Board a plan, profile and book of reference of the pipeline.

(2) The plan and profile shall be drawn with such detail as the Board may require.

(3) The book of reference shall describe the portion of land proposed to be taken in each parcel of land to be traversed, giving the numbers of the parcels, and the area, length and width of the portion of each parcel to be taken, and the names of the owners and occupiers in so far as they can be ascertained.

(4) The plan, profile and book of reference shall be prepared to the satisfaction of the Board, and the Board may require the company to furnish any further or other information that the Board considers necessary.

R.S., c. N-6, s. 29; R.S., c. 27(1st Supp.), s. 9.

34. (1) Where a company has prepared and submitted to the Board a plan, profile and book of reference pursuant to subsection 33(1), the company shall, in a manner and in a form to be determined by the Board,

(*a*) serve a notice on all owners of lands proposed to be acquired, in so far as they can be ascertained; and

(*b*) publish a notice in at least one issue of a publication, if any, in general circulation within the area in which the lands are situated.

(2) The notices mentioned in subsection (1) shall describe the proposed detailed route of the pipeline, the location of the offices of the Board and the right of the owner and of persons referred to in subsection (4) to make, within the time referred to in subsection (3) or (4), as the case may be, representations to the Board respecting the detailed route of the pipeline.

(3) Where an owner of lands who has been served with a notice pursuant to subsection (1) wishes to oppose the proposed detailed route of a pipeline, the owner may, within thirty days of being served, file with the Board a written statement setting out the nature of the owner's interest in the proposed detailed route and the grounds for his opposition to that route.

(4) A person who anticipates that their lands may be adversely affected by the proposed detailed route of a pipeline, other than an owner of lands referred to in subsection (3), may oppose the proposed detailed route by filing with the Board within thirty days

following the last publication of the notice referred to in subsection (1) a written statement setting out the nature of that person's interest and the grounds for the opposition to the proposed detailed route of the pipeline.

R.S., 1985, c. N-7, s. 34; 2004, c. 25, s. 148(E).

35. (1) Where a written statement is filed with the Board pursuant to subsection 34(3) or (4) within the time limited for doing so under that subsection, the Board shall forthwith order that a public hearing be conducted within the area in which the lands to which the statement relates are situated with respect to any grounds of opposition set out in any such statement.

(2) The Board shall fix a suitable time and place for the public hearing referred to in subsection (1) and cause notice of the time and place so fixed to be given by publishing it in at least one issue of a publication, if any, in general circulation within the area in which the lands proposed to be acquired are situated and by sending it to each person who filed a written statement with the Board pursuant to subsection 34(3) or (4).

(3) At the time and place fixed for the public hearing pursuant to subsection (2), the Board shall hold a public hearing and shall permit each person who filed a written statement with the Board pursuant to subsection 34(3) or (4) to make representations and may allow any other interested person to make such representations before it as the Board deems proper.

(4) The Board or a person authorized by the Board may make such inspection of lands proposed to be acquired for or affected by the pipeline construction as the Board deems necessary.

(5) The Board is not required to give any notice, hold any hearing or take any other action pursuant to this section with respect to any written statement filed with the Board pursuant to subsection 34(3) or (4) and may at any time disregard any such written statement, if

(*a*) the person who filed the statement files a notice of withdrawal thereof with the Board; or

(*b*) it appears to the Board that the statement is frivolous or vexatious or is not made in good faith.

1980-81-82-83, c. 80, s. 2.

36. (1) Subject to subsections (2) and 35(5), the Board shall not give approval to a plan, profile and book of reference unless the Board has taken into account all written statements filed with it pursuant to subsection 34(3) or (4) and all representations made to it at a public hearing in order to determine the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline.

(2) The Board may approve a plan, profile and book of reference in respect of any section or part of a pipeline where no written statement under subsection 34(3) or (4) has been filed with the Board in respect of that section or part.

1980-81-82-83, c. 80, s. 2.

37. In any approval referred to in section 36, the Board may impose such terms and conditions as it considers proper.

1980-81-82-83, c. 80, s. 2.

38. Where the Board has held a public hearing under subsection 35(3) in respect of any section or part of a pipeline and approved or refused to approve a plan, profile and book of reference respecting that section or part, it shall forthwith forward a copy of its decision and the reasons therefor to the Minister and to each person who made representations to the Board at the public hearing.

1980-81-82-83, c. 80, s. 2.

39. The Board may fix such amount as it deems reasonable in respect of the actual costs reasonably incurred by any person who made representations to the Board at a public hearing under subsection 35(3) and the amount so fixed shall be payable forthwith to that person by the company whose pipeline route is affected by the public hearing.

1980-81-82-83, c. 80, s. 2.

Appendix II

Board Ruling on Galbraith's Request for Direction

National Energy Board

Office national de l'énergie

File OF-Fac-Gas-E23o-2006-01 03
20 December 2007

Mr. David Galbraith
Galbraith Construction Ltd.
660 Ready Street
Saint John, NB E2M 3S5
Facsimile 506-635-1944

Dear Mr. Galbraith:

Emera Brunswick Pipeline Company Ltd. (Brunswick Pipeline)
Detailed Route Hearing MH-3-2007
Galbraith Construction Ltd. Request for Directions

The National Energy Board has received your letter dated 10 December 2007 in which you request that that a process be established for the consideration of a route outside of the corridor approved by the Board in the GH-1-2006 Decision on the Brunswick Pipeline Project.

The Board has noted the suggestions of alternate routes in your letters of objection dated 20 September 2007 regarding the route of the pipeline. These letters form part of the record for this detailed route hearing and will be considered by the Board.

Evidence by intervenors is due 14 January 2008. As part of your evidence you may elaborate on the route you referred to in your letters of objection. When Brunswick Pipeline filed its evidence on 18 December 2007, it was to include transparent overlays to the landowners which may be used by them to sketch their proposed alternate route. In your evidence, you are not restricted to suggesting a route within the corridor approved by the Board in the GH-1-2006 Decision.

While the Board could hear this alternative route by way of a section 21 of the *National Energy Board Act* application, and may require a section 21 determination at the end of the process, the Board does not require you to commence that proceeding. In the Board's view, a submission such as yours is already contemplated by the detailed route hearing process.

There may be cases where the Board would want to limit alternate routes to within the approved corridor, such as a situation where the corridor extends for 500m on either side of the proposed route. In that case the Board may take the view that the landowner has sufficient alternatives for

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a possible route within the corridor to address any concerns there may be. However, in this case, which is not unusual, where the corridor is significantly smaller than that in some places, the Board is of the view that it would limit a landowner's rights under the Act if it were to hold that proposed routes must be within the corridor.

If, at the conclusion of the detailed route hearing and based on the evidence on the record at that time, the Board determines that the route proposed by the landowner is better than that proposed by the pipeline, absent any additional evidence on the alternate route, the Board would not be in a position to approve the plans, profiles and books of reference filed by the company, but would also not be in a position to approve the route proposed by the landowner.

As you have noted, the Board would require evidence to conduct an environmental assessment pursuant to the *Canadian Environmental Assessment Act*, to evaluate the proposed route under section 21 of the NEB Act and to be able to make a submission to Governor in Council to recommend an amendment to the certificate issued by the Board. If Brunswick Pipeline wishes the Board to be in a position to be able to approve a route at the end of the detailed route hearing – either its route or proposed alternate route – without having another process, it will have to ensure that the Board has before it sufficient evidence required to make these determinations.

In conclusion, the detailed route hearing is the process by which the Board will consider the alternative route you have suggested. The fact that these routes are outside of the corridor affects neither what you can file in your submissions nor what can be considered by the Board. It may, however, have implications for other procedural issues or for other parties and therefore the Board appreciates the notice you have provided that the route you are proposing is outside of the corridor.

If you have any further questions please do not hesitate to contact Board Counsel, Ms. Margery Fowke at 403-299-3937 or toll-free at 1-800-899-1265.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

cc: All parties to MH-3-2007

Appendix III

Reimbursement of Costs

National Energy Board | Office national de l'énergie

File OF-Fac-G-E236-2006-01 03
23 January 2008

To: All parties to MH-3-2007

Emera Brunswick Pipeline Company Ltd. (Brunswick Pipeline)
Detailed Route Hearing MH-3-2007
Reimbursement of Costs

The following information is provided to assist parties in understanding how the costs of appearing at the hearing may be reimbursed.

The procedures for requesting costs incurred in making representations at a detailed route hearing are as follows:

1. After the hearing has concluded, a person may submit an itemized statement to both the Board and the company, of his or her costs incurred in making representations at the hearing. Receipts of costs must be provided along with:
   - the amount of the actual costs;
   - to whom they were paid or are owed; and
   - the reasons the costs were incurred.

2. If the company does not pay the costs within 60 days, the person may ask the Board to fix the amount to be paid by the company.

3. The Board may then appoint a mediator to attempt to seek agreement as to the amount of costs to be paid by the company.

4. If no agreement is reached within 20 days, the Board will then begin proceedings to fix the amount the company is to pay.

The Board cannot provide advance approval of costs that parties may incur. The Board may only determine what costs will be paid by the company after the conclusion of the public hearing.

Examples of actual costs which the Board **may** consider to be reasonable include, but are not limited to:

- legal costs incurred in preparing for and participating in the hearing;
- lost wages or costs of hiring a replacement for you to run your business;

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a possible route within the corridor to address any concerns there may be. However, in this case, which is not unusual, where the corridor is significantly smaller than that in some places, the Board is of the view that it would limit a landowner's rights under the Act if it were to hold that proposed routes must be within the corridor.

If, at the conclusion of the detailed route hearing and based on the evidence on the record at that time, the Board determines that the route proposed by the landowner is better than that proposed by the pipeline, absent any additional evidence on the alternate route, the Board would not be in a position to approve the plans, profiles and books of reference filed by the company, but would also not be in a position to approve the route proposed by the landowner.

As you have noted, the Board would require evidence to conduct an environmental assessment pursuant to the *Canadian Environmental Assessment Act*, to evaluate the proposed route under section 21 of the NEB Act and to be able to make a submission to Governor in Council to recommend an amendment to the certificate issued by the Board. If Brunswick Pipeline wishes the Board to be in a position to be able to approve a route at the end of the detailed route hearing – either its route or proposed alternate route – without having another process, it will have to ensure that the Board has before it sufficient evidence required to make these determinations.

In conclusion, the detailed route hearing is the process by which the Board will consider the alternative route you have suggested. The fact that these routes are outside of the corridor affects neither what you can file in your submissions nor what can be considered by the Board. It may, however, have implications for other procedural issues or for other parties and therefore the Board appreciates the notice you have provided that the route you are proposing is outside of the corridor.

If you have any further questions please do not hesitate to contact Board Counsel, Ms. Margery Fowke at 403-299-3937 or toll-free at 1-800-899-1265.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

cc: All parties to MH-3-2007

National Energy Board Act

Costs of making representations

39. The Board may fix such amount as it deems reasonable in respect of the actual costs reasonably incurred by any person who made representations to the Board at a public hearing under subsection 35(3) and the amount so fixed shall be payable forthwith to that person by the company whose pipeline route is affected by the public hearing.

National Energy Board Rules of Practice and Procedure, 1995

Costs

53. In order for the Board to fix costs pursuant to section 39 of the Act, a person who has made representations to the Board at a hearing held pursuant to subsection 35(3) of the Act shall prepare an itemized statement of the actual costs reasonably incurred by the person for the purposes of that hearing and shall send, on the same day by registered mail, a copy of the statement to the Board and to the company whose pipeline or international or interprovincial power line route is the subject of the hearing.

54. (1) Where a company receives a copy of a statement of costs in accordance with section 53 and does not pay the costs in full within 60 days after the date of mailing of the statement, the person who sent the statement may request the Board to fix the amount to be paid by the company.

(2) A company that receives a copy of a statement of costs referred to in section 53 may request the Board to fix the amount to be paid by the company.

(3) Any request referred to in this section shall be in writing and the person or company making the request shall send, on the same day by registered mail, a copy of the request to the Board and to the company or person, as the case may be.

(4) The Board may appoint a member of its staff to mediate between the company and the person involved in a request referred to in this section with a view to obtaining an agreement as to the amount of costs to be paid by the company.

(5) Where no agreement is reached within 20 days after the appointment of a mediator, the Board shall give notice to the person and the company, and commence proceedings to fix the amount of costs to be paid.

Appendix IV

Procedural Information – Public Participation

National Energy Board

Office national de l'énergie

File OF-Fac-Gas-E23o-2006-01 03
25 January 2008

Emera Brunswick Pipeline Company Ltd. (Brunswick Pipeline)
Detailed Route Hearing – MH-3-2007
Procedural Information – Public Participation

Purpose of a Detailed Route Hearing

Under the *National Energy Board Act*, (the Act) Brunswick Pipeline is required to file plans, profiles and books of reference (PPBORs) for a pipeline. These documents show, in detail, the proposed location of the route of the pipeline within the corridor previously approved by the Board during the Certificate hearing. The PPBORs with respect to specific segments must be approved by the Board prior to the Brunswick Pipeline beginning construction.

The Act provides that objections may be filed by landowners whose lands are proposed to be acquired for a portion of the pipeline or by those people who anticipate that their lands may be adversely affected by the proposed detailed route of a pipeline. The Board received objections from people in both of these categories. These people are collectively referred to in this hearing as the landowners. Given the objections filed, the Board established a public hearing to consider the detailed route on those parcels of land over which there is an objection to the route or timing or methods of construction. This public hearing is called a Detailed Route Hearing. In this case, there are objections from six different landowners to be considered, although two landowners had objections regarding more than one parcel of land.

Issues for consideration in a Detailed Route Hearing

Under the Act, the purpose of a Detailed Route Hearing is to allow the Board to determine the best possible detailed route of the pipeline and the most appropriate methods and timing of constructing the pipeline, taking into account the objections filed and the information provided at the Detailed Route Hearing. It is not intended to reconsider issues that were decided in the Certificate Hearing (GH-1-2006) such as the need for the pipeline and whether it is in the public interest. The Board can only consider issues that relate to a specific landowner's opposition to the route.

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Facsimile/Telecopieur : 1-877-288-8803

Participation in the Detailed Route Hearing

Anyone can attend to listen to the hearing. The hearing is also broadcast over the Board's Internet site. However, for this hearing, active participation (for example, though providing written statements, oral evidence, questioning Brunswick Pipeline, responding to questions on evidence, and providing a summary of position (argument)) is restricted to those people whose lands are, or are anticipated to be, adversely affected by the proposed route, and intervenors who have showed that their lands could be affected by Brunswick Pipeline's route or an alternate route.

Intervenors

Intervenor status is much more limited in a detailed route hearing than in other Board hearings, such as a certificate hearing, which considers matters from a broad public interest perspective. In determining whether a request to be granted intervenor status will be approved in a detailed route hearing, the Board considers whether the person's request shows that their lands might be adversely affected by the construction of the pipeline, or impacted by a proposed alternate route, on the lands for which an objection has been filed by a landowner.

In addition, if no objection by a landowner or a person whose lands are anticipated to be adversely affected has been filed for a certain portion of the route, then a detailed route hearing for that portion is not required. As a result, there is no provision for interventions with respect to that specific portion of the route.

The deadline for applying to be an intervenor in this hearing was 12 December 2007. The Board has accepted 11 intervenors.

Timing for Brunswick Pipeline to commence construction

Brunswick Pipeline does not have to wait until the Board has concluded the Detailed Route Hearing and the Board's decision on this hearing before it can start construction on other areas of the pipeline. If no objections are received with respect to a particular portion of the route set out in the PPBORs, the Board may approve that portion of the route. Once those portions are approved, and all other relevant pre-construction certificate conditions have been complied with, Brunswick Pipeline may begin construction on those portions. The Board has already approved the PPBORs for certain portions of the route.

Appendix V

Ruling on Mr. Poley's Requests

National Energy Board

Office national de l'énergie

File No OF-Fac-Gas-E236-2006-01 03
15 February 2008

To Attached Distribution List

Emera Brunswick Pipeline Company Ltd. (Brunswick Pipeline)
Detailed Route Hearing MH-3-2007
Concerning Galbraith Equipment Co. Ltd. PID # 00409011 and PID #00408294
Ruling on Mr. Poley's Requests for Extension of Time to file Final Argument and other relief, filed 13 February 2008

Background

In a submission filed 13 February 2008, Mr. C. E. Poley filed with the Board a letter which, in addition to outlining his concerns, requested various orders from the Board. The relief requested can be summarized as follows:

1. "An additional week or two so [Mr. Poley] may continue an undertaking" to put more evidence on the record to clarify the geology and drainage features of the area on and surrounding Mr. Poley's property on Bay Street and, as a result, an extension to the deadline ("perhaps two weeks") for intervenors related to the Galbraith Equipment Co. Ltd. (Galbraith) opposition to file argument. He further requested that the Board order a study of the excavations near KP 26.15 and along the eastern border of Galbraith's PID # 00409011 to determine the quality of the gravel, sand, and clay, as well as the direction of the water flows through those layers, and that this study be completed "before closing arguments are completed."

2. That the Board ask Brunswick Pipeline and Galbraith to desist from excavation on PID # 00409011 until such time as the parties "can come to a resolution amenable to all parties. That is, for the NEB to ask Brunswick Pipeline to acknowledge that PID 00409011 is an active pit, AND ask Galbraith to stop trying to prove it to the world." He also requested that there be a prohibition on excavation on PID 00409011 and on NB Southern's PID 00415687 until such time as the study [referenced in point 1] is completed; and

3. Clarification of the Board's final argument process and a Board ruling to allow intervenors to file reply argument.

.../2

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Generally, Mr. Poley is concerned that the Board does not accept the geology of the area as he has presented it, and that further excavation in the area could have significant adverse impacts to the unique characteristics of the community of wells in the Bay Street area. Mr. Poley stated that "the pipeline is the immediate threat to us, to our water, to our peace of mind, to our property values, and to the hoped-for increase in those values."

Given the timelines that had been previously set by the Board for the submission of final argument, the Board, through its Legal Counsel Ms. Saunders, orally provided its decision to Mr. Poley. She also contacted, to the extent possible, those other parties and intervenors who were active participants at the oral hearing with respect to this property. She advised these parties, on behalf of the Board, that the requests were denied, but that given the time frames involved, Mr. Poley would have a one-day extension to file his written argument on this file. Accordingly, the deadline for Mr. Poley only to file his written argument was extended to **Friday, 15 February 2008**. It was also communicated to these parties that written reasons for the Board's ruling would follow. This letter contains those reasons for decision.

Views of the Board

1. *The requests to order a study to be done, to allow the filing of late evidence and to extend the timelines for filing final arguments until after the completion any study.*

Mr. Poley filed his submission on 13 February 2008. The evidentiary portion of the hearing of this file concluded on 31 January 2008, subject to a few outstanding undertakings being fulfilled. The deadlines for final argument were set by the Board shortly thereafter. Brunswick Pipeline's argument deadline was 5 February, Galbraith's final argument was 12 February, followed by intervenors' final arguments on 14 February. Galbraith's reply argument deadline was set at 18 February 2008. As the last step in the argument process, the deadline for Brunswick Pipeline's reply was set at 20 February 2008. At the time of Mr. Poley's submission, both Brunswick Pipeline and Galbraith had filed their initial arguments. Certain intervenors had already filed their argument as well.

At this late stage of the proceedings, the evidence to support any application to reopen the evidentiary portion of the hearing, to file additional evidence, and for extension to timelines to file final argument must pass a very high bar. In determining whether to grant such a request, the Board considers a numbers of factors, including: whether the information could have been provided at an earlier date, the potential probative value of the evidence that may be filed and the potential prejudice that the late submission of evidence and the resulting extension of deadlines may cause. Generally, the later an application is made in the process, the greater the likelihood is that others will be prejudiced by the granting of it.

In the Board's view, Mr. Poley's submission did not provide sufficient justification why the information he is now seeking to have the Board reopen the evidentiary record for could not have been provided during the evidentiary portion of the hearing. In addition, insufficient explanation

regarding whether any study that may be done would be relevant to the Board's decision was provided. It was also unclear who would conduct the study, and what the timeline would be for the filing of the study, should such a study be undertaken.

On the other hand, substantial prejudice could be incurred by other parties should the evidentiary portion of the hearing be reopened and the deadlines extended. In order to comply with principles of natural justice, additional evidence at this late date could require that the Board allow for the testing of this late evidence, for example, through information requests, additional cross-examination or through the filing of rebuttal evidence. An additional round of final argument may also be required. Adding to the timelines for considering this matter increases the amount of time and resources all parties and the Board must expend. It also delays the determination of this matter, which is prejudicial not only to Brunswick Pipeline, but also to those parties who are waiting for resolution to determine their own next steps.

In the absence of sufficient evidence of why this information could not have been filed earlier, the uncertainty surrounding the submission of any late evidence and insufficient explanation of the probative value of the study to the Board's decision in this matter, should the study be undertaken, the Board is of the view that the prejudicial effect of granting the requests outweigh the probative value they may have for the Board's decision. Accordingly, the Board denies the requests to order a study to be done, to allow the filing of late evidence and to extend the timelines for filing final arguments until after the completion any such study.

2. *The request that the Board ask Brunswick Pipeline and Galbraith to desist from excavations.*

As a result of the above determination, it follows that the Board will not order Brunswick Pipeline to desist from any excavations. The Board further notes that, in these circumstances, it is not within the Board's jurisdiction to order Galbraith, or any other person, to desist from undertaking excavation on their property.

3. Clarification and request with respect to reply argument

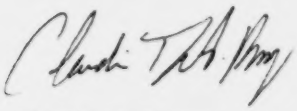
Mr. Poley also requested that clarification be provided with respect to final argument and reply argument. Final argument is a general term used by the Board to encompass the last phase of a hearing. At the close of the evidentiary portion of a proceeding, the party requesting a particular relief (e.g. detailed route approval) is given an opportunity to summarize its position before the decision-maker (Applicant final argument). Opposing parties (in this case, Galbraith and the Intervenors) are subsequently permitted an opportunity to present a summary of their position (also referred to as final argument). Reply argument is a step in the final argument phase of a hearing. This step allows those parties who have not already had an opportunity to respond to arguments raised by others the chance to do so.

In the "top down, bottom up approach" for this hearing, it is not necessary for Intervenors to have reply argument because, by the time Intervenors have the opportunity to submit argument, they will have already received the arguments of both Emera and Galbraith, effectively giving them the opportunity to respond to anything raised in those arguments. Emera and Galbraith have not had that opportunity yet, and as a result, they were provided the opportunity to submit reply argument. Since Brunswick Pipeline is the party seeking relief from the Board, it is entitled to provide the last reply argument. Accordingly, Mr. Poley's request for Intervenor reply argument is denied.

Next Steps

There are a few deadlines for final argument that have yet to expire. Following the completion of the final argument stage of this hearing, the Board will consider all evidence and argument submitted in the matter and issue its decision to all parties in due course.

Yours truly,



Claudine Dutil-Berry
Secretary of the Board

Attachment